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JUDICIARY IMPLICATIONS OF DRAFT REGISTRATION—1980

HEARINGS

BEFORE THE

SUBCOMMITTEE ON COURTS, CIVIL LIBERTIES, AND THE ADMINISTRATION OF JUSTICE

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

NINETY-SIXTH CONGRESS

SECOND SESSION

ON

THE CIVIL LIBERTIES AND ADMINISTRATION OF JUSTICE IMPLICATIONS OF DRAFT REGISTRATION—1980

APRIL 14 AND MAY 22, 1980

Serial No. 45

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IMPLICATIONS OF DRAFT REGISTRATION—1980

MONDAY, APRIL 14, 1980

U.S. HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON COURTS,
CIVIL LIBERTIES, AND THE ADMINISTRATION OF JUSTICE
OF THE COMMITTEE ON THE JUDICIARY,
Madison, Wis.

The subcommittee met at 9:30 a.m., in the assembly chambers, State capitol; Hon. Robert W. Kastenmeier (chairman of the subcommittee) presiding.

Present: Representatives Kastenmeier and Carr.

Also present: Michael J. Remington, counsel.

Mr. KASTENMEIER. The subcommittee will come to order. Welcome, everyone, to this morning's hearing on the civil liberties and the administration of justice implications of the draft registration.

I regret the delay in convening this hearing because of the inclement weather. The record should reflect that it is snowing and blowing quite heavily. We will have some delays both in terms of member participation and possibly witnesses.

First of all, I would like to remind everyone here that this is a hearing authorized by the House Committee on the Judiciary and therefore the rules of the House of Representatives apply.

I would like to say we are indebted to the Wisconsin State Assembly for permitting us to use its chambers for the purposes of this hearing. The official record of the proceedings will be transcribed and will be ultimately printed as a House hearing record.

I should also say that this is the first of more than one hearing on the subject. We have commenced it here in Madison and I will make further reference to that.

I have attempted to invite testimony from a diverse group of witnesses representing different points of view. I think this is necessary to present a fair inquiry into the issues before us.

You will note that we have scheduled tentatively a second day of hearings for Washington, D.C. That second day of testimony will give us an opportunity to hear from representatives of the Selective Service System, which was not able to send a representative here today for purposes of discussing its views on these questions.

You also will note that today's witness list gives us an opportunity to hear from the Justice Department, from a number of groups including women's organizations, civil rights groups and antiregistration or antidraft groups, and from legal scholars, prosecutors, members of the clergy, and local political representatives.

At this point in time, I would like to announce that unfortunately our first witness, Dr. Curtis Tarr, will not be able to be here because he was to have flown in this morning from Moline, Ill., and last word was because of blizzard weather conditions he will not be able to make that trip. Dr. Tarr was Director of the Selective Service System between 1970 and 1972 and we were quite anxious to hear his recommendations.

From discussions with him, however, I know he is apprehensive about resorting to registration at this time. For a thorough explanation of his position, we will let his written statement—which has been submitted to us—speak for him. At this point, I ask unanimous consent to insert Dr. Tarr's statement in the hearing record.

[The statement of Dr. Tarr follows:]

Statement of Curtis W. Tarr

Mr. Chairman, distinguished members of this Committee, I appear before you with great appreciation for the issues with which you grapple as you weigh the implications of the nation's return to registration for possible conscription in the event of a national emergency. My only qualification to speak is that I became familiar with these matters when I served as Director of Selective Service from 1970 to 1972. I argued for the continuation of registration in the mid-seventies, on the logic that those practices in a democracy that have become traditional can be maintained more easily than they can be reinstated. Now a different situation requires a careful examination of implications before proceeding with the process.

None of us knows the nature of the emergency our nation someday may face. But skillful opponents would choose a plan most difficult for us to oppose, likely one that would divide the resolve of the American people by employing conventional weaponry in unlikely locations. To meet such a threat, our armed forces would be committed as quickly as possible, although our ability to do so probably would be restricted by available aircraft and perils at sea.

We would encounter serious technical obstacles to producing sophisticated armaments in a short period of time with our industrial plant. Thus the combat units we had at the start of the emergency likely would be those with which we would be forced to wage the continuing battle. Since volunteers probably would not provide sufficient numbers to replace those lost in combat, a draft soon would be necessary.

Article I, Section 8 of the Constitution grants the Congress the power to provide for the common defense, to raise and support armies, and to provide and maintain a navy. Historically, the court have permitted conscription under this authority. I do not believe one could argue successfully that these or any other Constitutional provisions would permit mandatory national service, particularly in view of the safeguards of the first and thirteenth amendments.

Conscientious objection poses delicate problems in the context of these restraints. Toward the close of the war in Southeast Asia, the courts seemed to be applying two forms of pressure upon the Selective Service System. First, they insisted that we interpret the word "religion" as broadly as possible. Second, they required that we administer alternate service as if the man were being inducted into the Army; that is, Selective Service must order the man to his alternate service assignment on the same day he would go into the Army if not a conscientious objector. The only way to do so, where large numbers of conscientious objectors are involved, would be to establish federal programs. An attempt to eliminate alternate service for conscientious objectors would increase the number professing to be so, threatening a continuation of the draft. It also would create serious dissension among the American people.

Registration without conscription presents problems aside from the considerable logistical task of carrying out the registration and utilizing the data. Mostly these difficulties surround the enforcement of the law. As you know, existing statutes grant to the President the authority to order registration of young men for possible call into the armed services. If the President did so, prescribing that the enrollment be carried out within a short time period, rough estimates could be made rather quickly of the extent of violation, that is the failure to register.

But determining who failed to comply would not be an easy task. A law or regulations could require some proof of registration, a means of providing some check on the individual if the person were involved in another difficulty. A draft card, for example, would provide such proof if it were valid. Any attempt to utilize other governmental sources of information surely would run counter to the provisions of the privacy act. Yet, in all honesty, there was no sentiment in Congress, even before passage of the Privacy Act of 1974, to utilize social security or internal revenue records to determine enforcement. Also one must remember that these records would never be definitive; checking them against registration lists would not indicate all offenders. The difficulty of determining offenders is made more grave if the number of offenders is large. My judgment is that in this national climate, offenders would constitute a significant portion of the total pool.

If a person were apprehended for failure to obey the law, the next problem would be prosecution. Presently the penalty for violation far outweighs the gravity of the offense so that I doubt whether U.S. Attorneys or Federal Judges would attempt to convict young people in numbers that would insure reasonable compliance with the law. Reacting to that laxity, counsellors soon would advise young people not to register since the penalty would be inconsequential in the unlikely event that the offender were caught.

Once registration has taken place, then records must be maintained. Enforcing a requirement to notify selective service of a changed address would be even more difficult than enforcing the duty to register. Again, courts would not wish to treat this failure as a serious transgression, a further encouragement to non-compliance.

Thus I foresee the possibility of evasion by large numbers that would overwhelm the agencies for law enforcement and the judiciary. A law that cannot be enforced surely is worse than no law at all. The minimum step that should be taken by Congress would be to set new and reasonable penalties for non-compliance that might have some chance for application by the courts.

Ultimately, however, only those laws that will be supported by most of the people to whom they apply will be sound laws for the nation. Until the danger to our society seems clear and urgent to the youth of America, we invite lawlessness in attempting to force a compliance that seems to them unjust. I speak, therefore, in an attempt to prevent what I believe could be a serious error in national policy. Someday, perhaps soon, selective service again may be crucial to the nation's defense. To protect that possibility, we must make certain that we insure the success of registration before undertaking it.

Mr. Chairman, I would be happy to respond to any questions you may have.

Mr. KASTENMEIER. Without objection, the taking of photographs and televised pictures or anything else of this proceeding is permitted. I would also like to say that we would like to conclude by 12:30 today.

We hope to hear from all our scheduled witnesses. We would like to be able to accommodate witnesses as well who represent organizations and have prepared testimony but who are not scheduled.

I would like to explain again why these hearings are held. One of the responsibilities of the Government is to anticipate changes in law and how these changes will affect the citizen. In other words, we must ask how in fact registration and/or the draft will affect citizens. Will there be strict enforcement, what will be the civil liberties implications for individuals, how many individuals will refuse to register and will become felons.

We do not know the answer to very many of these questions in the year 1980. We had some bitter experiences in the sixties and seventies in that respect.

I think it is incumbent upon those in national leadership and the administration and Congress to anticipate things, to be able to respond to these questions when we are so shortly being asked to reimplement a registration system which may indeed, in the view of many, ultimately lead to the reestablishment of the draft itself.

As to why this first meeting is being held in Madison, Wis., I would like to say the following:

This community, through its universities, through its State government and local government, through its history of thoughtful debate has contributed a great deal to the issue of draft registration.

Its recent consideration of the registration question by the city council and by voter referendum, if not utterly unique, at least distinguishes this community. Its ongoing interest in other aspects of registration and the draft also make it an ideal place for such a hearing.

With these thoughts in mind and with the notion that national legislators have a continuing obligation to communicate with the grassroots of our country, I cannot think of a better place to commence these hearings on draft registration than in Madison, Wis.

With me today will be two distinguished colleagues from my subcommittee. I will introduce the gentleman from Illinois, Mr. Railsback, when he arrives. He is on his way. He, too, is flying in this morning and he should be here shortly.

I would like at this time to introduce on my right Congressman Bob Carr, who represents the Sixth District of Michigan. He is a native of Wisconsin, grew up in Janesville, and graduated from the Wisconsin Law School.

While a relatively new member of this subcommittee and the Judiciary Committee, he has worked for some time as a member of the Armed Services Committee, on which he is still a distinguished contributing member. He brings a special perspective to these hearings and we are glad to work with him on this question.

At this time, I would like to yield to Congressman Carr for any statement he may have.

Mr. CARR. Thank you very much.

It's a point of extreme personal privilege that I'm not only in this building where I started my political career some years ago as a member of the attorney general's staff but also to be here with you.

I can recall during the dark days of the Vietnam war that for many of us the Congressman from the Second District and my good friend was a beacon in the night. You held hearings on the Vietnam war here in Madison and it was a forum for many of us to speak our minds during those troubled times of the sixties. We had a great deal of trouble on the University of Wisconsin campus as we were trying to raise our consciousness about military involvement around the world.

And so it is indeed an extreme pleasure that I can now again observe you holding hearings here in Madison on another important issue that is related to the issues that we had in those days. As circumstances would present themselves, I am now a member of your committee and it is an extreme honor for me.

I also want to at this point and before your many friends here proclaim your leadership last year in the very difficult time we had in amending out a portion of the law, which my Armed Services Committee added, mandating that the President register people at the age of 18.

Bob Kastenmeier, along with Congresswoman Pat Schroeder from Colorado, Jim Sensenbrenner, also of Wisconsin, Ron Paul of Texas, Jim Weaver of Oregon, and so many others successfully led the fight to prevent the Armed Services Committee from mandating the President to register people at that time.

We won by an overwhelming majority but as we learned this year in the President's state of the Union message there are no permanent victories. The President changed his position and occasioned this hearing today.

I think that there are going to be some—particularly among my own committee, the Armed Services Committee—who are going to challenge your jurisdiction to be inquiring into this matter.

I will not be one of those and I think your jurisdiction to hold this hearing and to further investigate the judicial consequences, law enforcement consequences, of draft registration are very important.

I can tell you that the opinion of members of the Armed Services Personnel Subcommittee, which is not only favoring registration but is favoring a return to the draft, is that under the current state of law, any draft registration program which succeeds will not be enforceable and they view the President's decision and their support of registration as only a first step.

They view it necessary that there be enforcement. They think that enforcement will require waivers of the Privacy Act. They view registration as impacting on law enforcement priorities.

I think they make an admission that this subcommittee has very important jurisdiction which it would be remiss if it didn't hold hearings like this.

My own judgment is that draft registration is unnecessary, both from a military standpoint as well as being unwise from a law enforcement standpoint.

I hope that our witnesses will be able to give further evidence that the return to draft registration and the enforcement of the draft registration obligation is going to shift law enforcement priorities away from crimes, about which there is greater societal concensus, to a law violation where failure to register for the draft about which there will be deep division.

I hope this committee will focus attention on that very practical aspect of the problem. This will be an important counterweight to some of the hearings that have been held by the Armed Services Committee on which I sit which parades a group of witnesses decidedly proregistration.

I once again want to thank you for inviting me to these hearings and congratulate you for your leadership and thank you for your hospitality in Madison.

Mr. KASTENMEIER. Thank you for those remarks. I think they were very appropriate. They summarized the legislative situation and some of the issues really at stake in these hearings.

I would now like to call our first witness this morning. Because Dr. Curtis Tarr is not able at this point to get into Madison, I would like to call the representative of the U.S. Department of Justice. His name is Ezra Friedman. He has worked for the Criminal Division of the

Department for nearly 10 years. I believe Mr. Friedman works for the Criminal Division's Section on Policy and Planning which, to a large extent, is concerned with the drafting and processing of criminal code legislation.

Let me say to Mr. Friedman we welcome you to Madison on this wintry day. You may wish to either introduce yourself or your assignment in greater detail. You may proceed as you wish.

TESTIMONY OF EZRA FRIEDMAN, REPRESENTATIVE, U.S. DEPARTMENT OF JUSTICE

Mr. FRIEDMAN. Thank you very much. Mr. Chairman, Congressman Carr, I am honored to be here. This is my first time in Madison. I find it a beautiful city in spite of the weather conditions.

I'm sorry that Dr. Tarr was unable to make it because I feel that he might have been in a better position to speak to the issue that both you and Representative Carr raised this morning.

My role here is a very limited one. I'm with the Office of Legislation of the Criminal Division and we have had a great deal to do with the criminal code. I have had some assignments in that area but we are not formulators of the department policy in areas such as the draft, and in this area direction comes from the White House and not from the Department of Justice in any event.

Therefore, I merely am in a position of being limited to a discussion of current provisions of law in which you have expressed an interest and some of the proposals that have been made in the Senate and House versions of the criminal code, neither of which seem to be very close to passage in this session of Congress.

There is also a particular policy that the staff expressed an interest in, which, I think, I can clarify some of the misunderstanding.

The President has indicated that he feels that registration is important. The Department, of course, is involved in the drafting of legislation. The Department is involved in supervising prosecutions of violations of the law. But it itself has no policy on this matter.

I would point out that in the past the Supreme Court has held peacetime registration, in fact, peacetime draft, constitutional. I see no reason why, in principle, a registration act would present constitutional problems. I am in no position to hazard a guess as to enforcement problems that may be created by the passage of a bill of this kind.

Under the law, as it has existed, the registration requirement was enforced by a penalty of a maximum of 5 years imprisonment and maximum of $10,000 fine.

Under the ——

Mr. KASTENMEIER. On that point, did the President ask you to write legislation which would extend the penalty to females as well as to male citizens? Was it not the President's position that women as well as men should register?

Mr. FRIEDMAN. The provision of the statute and the code would be addressed to "whosoever fails to register"——

Mr. KASTENMEIER. Without regard to sex?

Mr. FRIEDMAN. That's correct. If the law passed by Congress required only males to register, then women would not be subject to the penalty, but if the registration law passed applies to both sexes then the penalties for violation apply to both.

The two code provisions differ from one another and from existing law:

The Senate version, known as S. 1722, in its section 1114 provides that failure to register in time of war would be a class D felony. A class D felony under the Senate bill provision carries with it a penalty of up to 5 years imprisonment and/or a fine of $250,000.

Now any other time—nonwar time——

Mr. KASTENMEIER. You would propose to fine 18 or 19 year olds $250,000?

Mr. FRIEDMAN. No. I remind you that the penalty scale in the codes vary, but apply across the board for all offenses under the code. Draft registration violation would only be one of them. Applying to all violations, there are special provisions both in the House and Senate codes requiring the court to take into special consideration the impact of these penalties.

The reason that these penalties have gotten so large in the financial aspect is in response to the needs of the consumer and people like us living in this environment to the offenses that are commonly called "white-collar," where great disasters are threatened and committed almost with impunity under our current standard $1,000, $5,000, $10,000 fines. They are only the cost of doing business where you are in some sort of sordid underworld enterprise or where you are big business ripping off the environment or taking advantage of the consumer. As a result there has been a general raising of the fine structure to what in former times would have been considered exorbitant limits.

Under the Senate bill, if it is not in time of war, so long as there are registrants being inducted in the ordinary course, the offense would be a class E felony and the penalty would be maximum of 2 years imprisonment and the fine would remain at $250,000.

If, on the other hand, you had a third situation, where you had registration required but there was no induction authority being exercised, then it would be a class A misdemeanor carrying a maximum term of 1 year in prison and maximum fine of $25,000.

The structure in the House bill which is known as H.R. 6233 is somewhat different. Its section 1314 provides that it is a D felony, to fail to register in time of war or national defense emergency. The penalty under the House structure would be for only 40 months imprisonment, as opposed to 5 years, and the fine is fixed at the same level, $250,000.

In the case of the violation of failure to register not committed in time of war or national emergency, the penalty is, for an E felony, a maximum term imprisonment of 18 months and a fine maximum of $250,000.

You can see that the two penalty structures, within the two codes compared generally, and in the application to the particular offense of failing to register, are quite different and differ measurably from the current law provisions.

The current law provision, I might add, is currently under suspension since there is neither induction authority nor is there any registration being conducted at this time because the President revoked registration procedures in 1975.

Mr. **Kastenmeier.** Let me understand that because that is the crux of the present situation.

In the event that there is a money transfer so that registration could be implemented by Executive order, what does that do to the penalties? Does that reinvoke them or are there no penalties which presently would apply to failure to register?

Mr. **Friedman.** I believe with authorization of registration, and the reinstitution of registration procedures, that the current law penalties would come back into effect.

Mr. **Kastenmeier.** Merely by the transfer of money and the President's order to reinstitute registration that would reinstitute the authority of the penalty which had been dormant?

Mr. **Friedman.** That is my understanding. I must confess I'm not an expert. At one time I had greater contact with it but that was a number of years ago.

Mr. **Kastenmeier.** I'll question whether your finding——

Mr. **Friedman.** The question was raised by your staff, Mr. Chairman, about a provision in the U.S. Attorney's Manual which in effect provides that enlistment is not considered an alternative to prosecution.

The date of the inclusion of that provision in the manual was quite current and it therefore seemed to be a new or novel policy of the department. This is really not so. There were predecessors to this provision in the manual and in other memoranda that had been issued in 1962 and even earlier than that.

The manual provisions are directed primarily to those situations where a man who had been charged with an offense, in order to avoid being sent to prison, tries to cut a deal whereby the case will be dropped in favor of his enlistment.

Except perhaps during World War II, when manpower needs were at their greatest, it has been the consistent policy of the Department of Defense that it does not want the Army treated as a correctional institution or dumping ground or rehabilitative institution for the ills of society. One doesn't want to put dope addicts, thieves and violent people into the barracks. The government should not want to see the Army equated with penal servitude, and the stigma of felony conviction.

One of the reasons that the manual item had to be changed was because there had been a shift from the draft to the All-volunteer Army and it required changing the wording.

Mr. **Kastenmeier.** I think that is a good point.

You have suggested that since we have gone to an All-volunteer Army the consistent philosophy should be that people are sought to fill the ranks who deserve to become members of the armed services and accordingly that people who are coerced into it are not properly motivated and therefore enlistment as an alternative in our criminal justice system is not appropriate and, as reflected by the U.S. Attorneys' Manual this is the present policy.

Is that correct?

Mr. **Friedman.** Yes. In those days when we had a draft, the fact that a man was called upon to serve his country was supposed to be both an honor and an obligation, such as jury service or any other duty one has to perform.

There is something degrading about that, to see it traded off to felons who are under charges, or have been convicted, and they can buy their way out of the State pen or Federal pen by going into the military.

Now I think there has been some concern that registration violations, civil service violations, and draft violations would result in young people being subjected to these penalties.

The practice has been that where the violations do not appear to be willful or if there was some showing of change of heart and mind, that the penal sanctions that were given by the Congress to violations of the Selective Service Act were used to enforce it—in other words assist us to get people into the service and not into prison. There has been from time to time, in many situations, a different policy at work where you were dealing with Selective Service matters.

That does conclude my statement. I have tried to summarize it rather than recite it verbatim. I would appreciate it very much if you would include the formal statement in the record.

Mr. KASTENMEIER. Without objection, your formal statement will be served as part of the record.

[The statement follows:]

STATEMENT OF EZRA H. FRIEDMAN, OFFICE OF LEGISLATION, CRIMINAL DIVISION, DEPARTMENT OF JUSTICE

Mr. Chairman, and members of the Subcommittee, it is an honor for me to appear here today to participate in your hearings on proposals for registration for military service. As you are aware the President feels very strongly that registration should be swiftly reinstituted so that we will be able to meet promptly any threat to our national security from armed enemies abroad. He looks to the Congress to assist him in sending the message of a united and determined people to those who see in our patient and pacific demeanor and democratic discussions signs of weakness and an invitation to international adventurism.

In accordance with the understanding reached by you, Mr. Chairman, and the Attorney General, my remarks today will be very brief, being limited to the penalty structure under current law and the porposed criminal codes under consideration by the Congress, and a certain prosecutorial policy in which you have expressed an interest.

The Supreme Court of the United States has upheld the power of Congress to establish a system of registration for individuals liable for military training and service, pursuant to its constitutional power to raise and support armies. *United States* v. *O'Brien*, 391 U.S. 367 (1968). Also, it has been held that Congress has the constitutional power to seek information through registration in peacetime in order to be prepared for the intelligent exercise of its power to raise armies by conscription. *Richter* v. *United States*, 181 F. 2d (9th Cir. 1950).

The statutory requirement for Selective Service Registration is contained in Section 3 of the Military Selective Service Act (Title 50 United States Code Appendix, Section 453). In substance, this section provides that every male citizen of the United States has the duty to present himself for, and submit to, registration at such time and place, and in such manner, as shall be determined by proclamation of the President and by rules and regulations prescribed thereunder.

The failure or refusal to perform the duty to register bears the same penalty as do other violations of the Act, that is, it is a felony punishable by imprisonment for not more than five years, or a fine of not more than $10,000 or both, under Section 12(a) of the Act.

Registration has not been required since 1975. Presidential Proclamation No. 4360, of March 29, 1975, revoked the then existing pertinent proclamations and thereby terminated the requirement for registration under the Act.

Under § 1114 of the Senate version of the proposed Federal Criminal Code, S. 1722 (Jan. 17, 1980), failure to register in time of war would be a Class D felony (§ 1114(c)(1)), carrying a liability of imprisonment up to 5 years (§ 2301(b)(4)) and/or a fine of $250,000 (§ 2201(b)(1)(A)). At any other time, provided registrants were being inducted in ordinary course, the offense would be a Class E felony (§ 1114(c)(2)), carrying a maximum term of 2 years (§ 2301(b)(5)) and/or a fine of $250,000 (§ 2201(b)(1)(A)).

If registrants were not being inducted, the offense would be a Class A misdemeanor (§ 1114(c)(3)), carrying a maximum term of imprisonment of 1 year (§ 2301(b)(6)) and/or a fine of $25,000 (§ 2201(b)(1)(B)).

Under § 1314 of the House version of the proposed Federal Criminal Code, H.R. 6233 (January 10, 1980), failing to register is a Class D felony if committed in "time of war or national defense emergency," (§ 1314(b)(1)), carrying a maximum penalty of 40 months imprisonment (§ 3702(4)) and/or a fine of $250,000 (§ 3502(1)(A)), and a Class E felony if committed at any other time (§ 1314(b)(2)), carrying a maximum term of imprisonment of 18 months (§ 3702(5)) and/or a fine of $250,000 (§ 3502(1)(A)).

S. 1722 § 2202(a)(1, 2 and 5) require the sentencing court, when imposing a fine, to consider the defendant's ability to pay, the burden on him and his dependents and any other pertinent equitable consideration. Section 2202(d) specifically precludes the imposition of an alternative jail sentence. Parallel provisions are found in the House bill in Sections 3503 and 3504.

The Department's policy is not to use enlistment, or an offer of enlistment, as an alternative to prosecution except in rare cases. This is consistent with current Defense Department policy. The United States Attorney's Manual sets forth the following directives:

9-2.021 Armed Forces Enlistment As An Alternative To Federal Prosecution

Present regulations of the Armed Services prohibit the enlistment of an individual against whom criminal or juvenile charges are pending or against whom the charges have been dismissed to facilitate the individual's enlistment. This policy is based, in part, on the premise that the individual who enlists under such conditions is not properly motivated to become an effective member of the Armed Forces.

Determination as to whether prosecution should be instituted or pending criminal charges dismissed in any case should be made on the basis of whether the public interest would thereby best be served and without reference to possible military service on the part of the subject. The Armed Forces are not to be regarded as correctional institutions and the United States Attorneys are urged to give full cooperation to the Department of Defense in the latter's efforts to ensure a highly motivated all-volunteer Armed Force and to bolster public confidence in military service as a respectable and honorable profession.

There may be exceptional cases in which imminent military service, together with other factors, may be considered in deciding to decline prosecution if the offense is trivial or insubstantial, the offender is generally of good character, has no record or habits of anti-social behavior and does not require rehabilitation through existing criminal institutional methods and failure to prosecute will not seriously impair observance of the law in question or respect for law generally. In no cases, however, should the United States Attorney be a party to, or encourage, an agreement respecting foregoing cirimінal prosecution in exchange for enlistment in the Armed Services.

This Manual section carries forward prior Criminal Division memoranda and manual provisions dating back to at least 1962. It should be noted that when a defendant was charged with a Selective Service violation, prosecution was often declined or discontinued in favor of his fulfilling his obligations under the Act.

That concludes my prepared remarks, Mr. Chairman. I will endeavor to answer any questions you may have with respect to them.

Mr. KASTENMEIER. We appreciate your testimony and your coming here this morning to express what the present law is and what the contemplated changes are to be made from the Department of Justice perspective.

On the latter point; that is, enlistment as an alternative to Federal prosecution, I have two questions:

We are talking about two groups of individuals: Those charged with crimes not related to registration and the draft and those whose crimes are related to registration and the draft. Did I understand you to say that were the offense in the latter category, there is a potential to treat people differently and to coerce induction or enlistment in exchange for no prosecution? Or will the Justice Department treat them as though they were charged with some other crime, and then process them through the regular justice system rather than having them go into military service?

Mr. FRIEDMAN. I think in the case of the selective service violations often what is meant is, only an apparent violation—in other words, a man has failed to report for induction and when he is located he says that it was because he changed his address, didn't get the notice, and so forth.

In situations like that, instead of intensively investigating that and trying to build a case that this was a willful violation and he was trying to evade service, you give him the benefit of the doubt and you decline in favor of further processing by the Selective Service System.

Mr. KASTENMEIER. What about those who clearly, for reasons possibly of political point of view or conscience, say they won't register or they won't submit to induction quite knowingly? There is no question about what they intend.

As I said, I was talking to Dr. Tarr earlier, who thinks the percentage of those people might be high. What about those people?

Mr. FRIEDMAN. In the past those violators would be prosecuted. There were many cases when you come to the prosecution stage and you investigate the selective service record you find there are procedural defects making a conviction impossible. Where the violation exists and the defendant refuses to cooperate and accept his obligation under the law, you have very little alternative but to prosecute him.

Mr. KASTENMEIER. I have a poll just given me, conducted by Prof. Herbert Knitzer, department of political science, University of Wisconsin, as to the intentions of students in this regard. And it's unsettling about whether a fairly sizable percentage would submit voluntarily to a law compelling either registration or service. And that is a tough question. It isn't the procedural defects, it's this group of people who decide, for whatever reason, not to comply with the law. That would put the Justice Department in the position of presumably following through to prosecution of these people.

Perhaps you can't answer that today, Mr. Friedman. But I wonder to what extent the Department of Justice has thought about this and whether we are going to have more U.S. attorneys, investigatory staffs, FBI agents, or whatever prosecutorial support; whether we are prepared for noncompliance, willful noncompliance with a law that might very soon be passed by the Congress and agreed to by the President. It's much up in the air at this moment. We may go back and vote on this next week. We almost voted on it last week.

This is something that confronts us today. That is one of the reasons for these hearings, to understand and to anticipate the impact of a law such as this on the lives of hundreds of thousands of young people, as well as its impact on government, on the Department of Justice, on the U.S. attorneys, on the courts, and finally on the prisons.

As I say, I am not trying to put you on the spot; but my ultimate question is, are you aware whether the Attorney General or the Criminal Division has prepared for eventualities here in the event the law comes into being?

Mr. Friedman. I don't have any information on that, sir.

Mr. Kastenmeier. Thank you.

Mr. Carr. I have a question perhaps for the chairman and our distinguished witness.

It says in the prepared remarks:

> In accordance with the understanding reached by you, Mr. Chairman, and the Attorney General, my remarks today will be very brief, being limited to the penalty structure.

I would not like that statement left standing in the record for a lot of people to wonder about.

What kind of agreement is there here about the limitation on the scope of your testimony?

Mr. Kastenmeier. I don't know whether you are addressing your question to me.

Mr. Carr. I will address it to the Chair first.

Mr. Kastenmeier. I can speak for Mr. Friedman in that question. Mr. Friedman's statement addresses those areas that we asked him to address, namely, penalty structure, present law, proposed law, and what prosecutorial policy there may be.

We did not ask the Department of Justice, at this point in time, to go beyond those questions; and I think we have not, neither he nor we. I say that because the Department of Justice said they would be willing to speak to these questions in this context at this time.

I think it's fair to say—and this may be a problem—that the administration, quite candidly, has not been able to answer these questions. The Department of Justice did not instigate the notion of registration, but, naturally, as part of the administration, it will follow through the way the President wants it to. The fact of life is that for many of the policy questions there are not answers, or they are not fully understood or resolved internally at this point in time. And Mr. Friedman is not prepared to speak more fully than the area of my questioning and his presentation.

Mr. Carr. I don't want to do violence to an agreement between the Chair and witnesses with regard to scope of testimony. I think what you say, Mr. Chairman, is true. I think it's also possible to interpret the administration as piecemealing us.

The administration has come forward with a request for money to be shifted in an appropriations package that you alluded to that we will probably vote on this week or maybe next. That contains money for the direct registration of people. That contains money for the Selective Service System.

What we are not being told about is the law enforcement consequences of this decision and the amount of resources to be shifted pursuant to that decision.

About a month and a half ago I asked the Attorney General for this information, and at that time he gave me a rather indefinite response, somewhat similar to what you have reported here today. And that was a month and a half ago. Perhaps the Justice Department doesn't have a lot of people sitting around waiting for something to do, like the Pentagon does. But this is a burning top priority issue of this administration. They have made it so, not us.

The administration has made it an issue. I think we are entitled to ask questions about the overall cost, consequences, and I think before the Congress makes a decision it's terribly unfair that we are only presented with part of the cost this week, and 2 or 3 months from now, or maybe next year an additional tab for the enforcement consequences of this decision.

I just don't think that the Justice Department can have it both ways.

There's a wealth of experience in the Justice Department on selective service law enforcement. There are volumes of the Selective Service Law Reporter. There was, even at that time before the computerized age, documentation and logging of cases. We know how many cases under a variety of circumstances, both during the Vietnam war and the hiatus between Korea and the Vietnam war. We do have something we can go to.

I think it's unfortunate, with a vote coming up so soon, that the Justice Department has been dragging its feet, for whatever reason, some good perhaps, some bad.

If you limit the scope of the testimony you limit the scope of the questioning, and therefore at this particular hearing you somewhat throw a blanket over the scope of inquiry of the people here in Madison.

I hope, Mr. Chairman, you use all of the power and influence and good offices of your chairmanship to prod these fellows at the Justice Department. I know you have been doing that. And I have been doing it, too. But I hope you would take back to Washington a message that some of us will not be deterred by lame excuses that we haven't focussed on it.

Mr. Friedman. All I can say is I will do that.

However we are talking now mostly about registration. And in the past my understanding is that registration never created a serious law enforcement problem. The principal law enforcement problem came in in the processing of claims for exemptions, primarily conscientious objectors, because of the complexity of the selective service procedures and the issues involved in conscientious objection.

Most of the cases I think that are on the books really reflect that kind of issue.

Mr. Carr. I understand that full well, that a policy decision was made to prosecute only on failure to present yourself for induction. I am intimately familiar with that. However, if the President is correct in his stated intention that he doesn't intend to induct anyone, then, rather than having induction as the front line of law enforcement concern, registration becomes the front line of law enforcement concern.

If, as you state in the first part of your statement that the President feels very strongly that registration should be swiftly instituted so that we may be able to meet any conflict from enemies abroad, and he looks to Congress to submit a message of a united and determined people to those who see in our demeanor and democratic institutions signs of weaknesses—if he is interested in sending this message, he can't tolerate people not going along with him. He not only has to get the Congress and Selective Service geared up but he has to make sure people are registered. And that means law enforcement, and that means that registration becomes the front line instead of induction.

You can look back and find out what the behavioral landscape was. You can project from that I think to determine what kinds of resources the Justice Department will have to devote to it and what kind of priorities it will have to have. The administration put this on the front burner. It wasn't the Congress.

Now, I don't think the administration can hide behind the fact that we haven't thought about all of the consequences.

Mr. KASTENMEIER. As a matter of fact, I would say that is one thing the Congress is charged with, and the President: Consideration of the consequences of a change of law.

If you confront a young citizen, 18 or 19, with making a decision, presumably he or she will comply with the law. But we cannot be certain of that. We have to understand to what extent the law will not be complied with. We have to understand the consequences. The President does. It cannot be said merely at some later point in time that we are surprised by noncompliance.

Mr. FRIEDMAN. I am not a statistician, but I know statisticians can make predictions of that sort. I would say that we do not expect that there will be any mass resistance to registration. If there is going to be mass resistance to registration, I would assume Congressmen who are closer to the grassroots are the ones who will be most aware of this. This will, of course, figure into their decision as to how they will vote on an issue such as this when it's presented to them.

If the administration thinks it needs registration, and a law is passed by the Congress, then the Department will have to do what it can to enforce that law.

Mr. CARR. What we are trying to do is put some figures and put boundaries on that.

Mr. FRIEDMAN. It's not at all clear, Congressman, that the Congress of the United States is not in as good or better position than the Department to determine what the impact of this legislation is going to be, what the reaction of the citizenry is going to be, and what the enforcement problems will be.

Mr. CARR. If you will leave it up to the Congress, you know we decided that last year with the President fighting us on it. You can't chuck it off on the Congress.

I think polls like the chairman has introduced—Are you putting this in the record, Mr. Chairman?

Mr. KASTENMEIER. Yes. I will ask permission to put this, Mr. Kritzer's statement and poll in the record.

[The statement of Prof. Herbert M. Kritzer follows:]

STATEMENT OF HERBERT M. KRITZER, DEPARTMENT OF POLITICAL SCIENCE, UNIVERSITY OF WISCONSIN

President Carter's recent proposal to institute draft registration for young men and women has drawn mixed responses from the persons most directly concerned: the prospective registrants. These responses have raised questions about the likely degree of compliance with an active draft registration program, and the potential impact of non-compliance on the federal justice system (the U.S. attorney's office, the Federal District Courts, and the Bureau of Prisons). There is little concrete (whether it be soft or hard concrete), information available to try to predict the likely consequences of registration.

While one might be tempted to turn to the Vietnam experience to make tentative projections, I question whether that would be a realisic approach. There are several interrelated reasons why I say this. As far as I can determine there were very few actual prosecutions for nonregistration during the Vietnam period; the data here are very soft because the published information on Selective Service prosecutions does not distinguish among the various offenses that could have been committed (e.g., nonregistration, failure to report for physical examination, failure to report for induction, refusing induction, failing to report for alternative service, destroying draft cards, etc.). My (equally soft) explanation is that nonregistrants, when they were discovered, were given the option of registering, which most of them accepted. Perhaps of more importance is that, as far as I can determine, we have no information on the incidence of nonregistration. While today, the virtual universal possession of social security numbers (for employment, savings accounts, school id cards, etc..) and the inclusion of the social security number on the proposed registration form, will make it fairly easy to assess the degree of initial compliance and to identify nonregistrants, this was not the case in the 1960's when social security numbers were not such a universal part of American life. One element of the current proposal that further complicates comparisons to the 1960's is the possible inclusion of women in the registration requirement. There has been some speculation that women registrants would be more likely to claim conscientious objector status; if this is in fact true, one might expect other differences in the choices made by women vis-a-vis the draft.

The only fully reliable way to determine what would happen under an active registration system would be to institute the system and to observe the results. The next best alternative is to ask people what they would do if faced with registration. In a sense, this is asking people to roleplay possible future behavior; we know from work in experimental social psychology that people tend to be less defiant of authority in an "actual" situation than in a "roleplay" situation. Nonetheless, by "discounting" the level of defiance, we can reasonably speculate about the behavior of potential registrants.

Using a pencil and paper questionnaire I recently conducted a survey of University of Wisconsin undergraduates in an effort to obtain some information on the potential behavior of the cohort targeted for registration. The questionnaire was administered to students in four introductory level political science courses commonly used to fulfill University distribution requirements; this sample should be a fairly good approximation of a random sample of University undergraduates. In the tabulations I will discuss in a few moments, I have relied on the responses of 327 students aged 20 or under. The sampling errors, assuming this does represent a random sample of University students in this age range, are ±5.5 percent for percentages in the range of 20 percent to 50 percent, ±3.3 percent for percentages in the neighborhood of 10 percent, and ±2.4 percent for percentages in the neighborhod of 5 percent.

Before turning to the results, let me make a few comments on the questionnaire itself. The basic assumption underlying the questionnaire is that the goal of any enforcement system will be to get nonregistrants to register; in such a system, an individual would at any point have the option of registering and thus escaping further processing through the enforcement system. The questionnaire assumes that there are four key points where the potential registrant will confront the decision of whether or not to register: when registration is first initiated (or the individual reaches registration age), when the individual is determined to be a non-registrant and is first contacted by the enforcement system, when the individual is explicitly threatened with prosecution, and when the individual must make the immediate decision whether or not to go to prison. At any one of these points, an individual can choose to register. The questionnaire does not in any way incorporate the additional complexities that would be introduced into the enforcement system by the start of actual inductions.

One last comment before turning to the results: this is a survey of University of Wisconsin students only. The degree to which the results can be generalized to the entire target population depends upon the degree to which University of Wisconsin students are representative of that population; only additional research can assess the biases introduced by the limitations of the sample.

The results of the basic survey are summarized in three tables: one for all respondents, one for men, and one for women. The potential problem facing a reactivated Selective Service System are clear in the first line of Table 1: less than half (46.5 percent) of the respondents report unequivocable compliance with a registration requirement, and 32.7 percent explicitly state that they would not initially register. Only 9.8 percent of the respondents say that they would register if "found out" by the government; 19.3 percent are unsure what they would do once they were "found out". According to the respondents' answers, prosecutions would have to be instituted (or at least threatened) for somewhere between 15 and 30 percent of potential registrants; even discounting this figure to 5 percent would mean 400,000 prosecutions if both men and women were required to register. About 5½ percent of the respondents express a willingness to go to jail rather than register (another 13.8 percent are unsure whether or not they would go to prison); if as few as 2 percent would actually be willing to go to jail, this would mean 160,000 new inmates (80,000 of whom would be women).

The survey also suggests that concerns about differences in the behavior of men and women are unfounded. A close examination of Tables 2 and 3 shows no large differences in the response patterns of men and women. The only consistent difference is in the "unsure" column, where women appear to be more uncertain about what they will do if confronted by registration. This is not at all surprising, given the fact that the idea is a "new" one for many young women, while young men are brought up with at least somewhat of an expectation that they will have to serve in the military or make a positive decision not to do so.

The survey also sought to obtain information on the frequency of conscientious objector (CO) claims that would arise under a reactivated draft. Selective Service memos have speculated that perhaps as many as half of the registrants would request CO status. This survey suggests that such an estimate may not be far off: only 27 percent of the respondents to the survey (excluding those who said they would go to prison) indicated that they would not apply for CO status; a larger group was unsure (31.9 percent), and the largest group (41.1 percent) consisted of those who said that they would apply for CO status. Once again, the largest difference between men and women was in the "unsure" group (36.0 percent of the women versus only 28.2 percent of the men).

TABLE 1.—REGISTRATION: ALL RESPONDENTS[1]

[In percent]

Decision point	Total now registered	Previously registered	Now registering	Unsure	Not registering	Would go to prison	Would leave country[2]
Initiation of registration	46.5	----------	46.5	20.8	32.7		
Discovery by Government	56.3	46.5	9.8 [3] (18.3)	19.3 (36.1)	24.5 (45.8)	----------	----------
Threat of prosecution	69.1	56.3	12.8 (29.3)	14.4 (33.0)	16.5 (37.8)	----------	----------
Threat of prison	78.8	69.1	9.5 (30.5)	13.8 (44.4)	7.4 (23.8)	5.5 (17.7)	1.6 (5.8)

[1] N=327.

[2] Volunteered response.

[3] Figures in parentheses are percentages based upon only those respondents making a decision at the specified time point (i.e., those previously registering are excluded).

TABLE 2.—REGISTRATION: MEN[1]

[In percent]

Decision point	Total now registered	Previously registered	Now registering	Unsure	Not registering	Would go to prison	Would leave country[2]
Initiation of registration	50.0	----------	50.0	19.3	30.7		
Discovery by Government	59.6	50.0	9.6 [3] (19.2)	17.5 (35.0)	22.9 (45.8)	----------	----------
Threat of prosecution	69.9	59.6	10.2 (25.2)	12.7 (31.4)	17.5 (43.3)	----------	----------
Threat of prison	78.9	69.9	9.0 (29.9)	12.7 (42.2)	8.4 (27.9)	6.0 (19.9)	2.4 (7.8)

[1] N=166.

[2] Volunteered response.

[3] Figures in parentheses are percentages based upon only those respondents making a decision at the specified time point (i.e., those previously registering are excluded).

TABLE 3.—REGISTRATION: WOMEN[1]

[In percent]

Decision point	Total now registered	Previously registered	Now registering	Unsure	Not registering	Would go to prison	Would leave country[2]
Initiation of registration	43.8		43.1	22.5	34.4		
Discovery by Government	53.1	43.1	10.0 [3] (17.6)	21.2 (37.3)	25.6 (45.0)		
Threat of prosecution	68.8	53.1	15.6 (33.3)	16.2 (34.5)	15.0 (32.0)		
Threat of prison	78.8	68.8	10.0 (32.1)	15.0 (48.1)	6.2 (19.9)	5 (16)	1.2 (3.8)

[1] N=160.

[2] Volunteered response.

[3] Figures in parentheses are percentages based upon only those respondents making a decision at the specified time point (i.e., those previously registering are excluded).

TABLE 4.—CONSCIENTIOUS OBJECTOR CLAIMS

[In percent]

	Would request CO status	Would not request CO status	Might request CO status	Total
Both men and women (N=304)	41.1	27.0	31.9	100
Men only (N=156)	42.9	28.8	28.2	100
Women only (N=147)	39.5	24.5	36.0	100

The conclusions to be drawn from this survey are obvious: without a massive enforcement program, a draft registration requirement will be ignored by a substantial proportion of the target population. The necessary enforcement system will probably be very costly (it is interesting to speculate whether it might in fact be less expensive, in dollar terms, ignoring issues of equity, to raise salaries of military personnel). If the level of noncompliance is anything like that suggested by this survey, and if the existing federal justice system is used as the enforcement mechanism, one should expect to find that the character of the justice system would be substantially altered; the ability of the system to conduct its traditional business would be in jeopardy.

There is a second message to be found in these data. Without a threat to American security that produces a consensus among the citizenry (a modern day Pearl Harbor such as the seizure of the Alaskan oil fields by Soviet backed Afghan troops), there is likely to be massive numbers of requests for conscientious objector status. The recently released memos which were prepared for the Selective Service System suggest that officials are concerned about this problem; however, the memos also make it clear that no one has any practical ideas of how to deal with the problem. If nothing else, this dilemma makes clear the inherent problems of a peacetime draft with a politically conscious citizenry.

Mr. CARR. We are in the middle of a census and have asked every question under the sun, so why can't we ask the Americans through polling procedures what the consequences of the registration procedure will be? You can't have it both ways. You can't determine a policy and then not answer questions about that policy, pleading ignorance.

Mr. FRIEDMAN. Don't misunderstand. For all I know, this kind of investigation, survey, has been going on. I don't know.

I think one of the reasons for the limitation on the testimony was that the available body coming down to address you was myself.

Mr. CARR. I don't mean to be hard on you, Mr. Friedman. We had so little time in making our congressional decision.

I know the chairman of this committee and our efforts to get this kind of information out of the Department of Justice has not worked.

One thing about the dumping ground thing that bothers me is that it appears, first, that during the Vietnam war, notwithstanding this kind of a policy, enlistment was an alternative to prosecution. I believe that you will be able to do some study of that phenomena as well. It may not have been as a result of a U.S. attorney saying, OK, fellow, why don't you enlist, and we will forget this whole thing. But, rather, my experience as a selective service attorney in those days was that the U.S. attorney would go to the judge and quietly suggest that if the judge got the fellow to enlist they wouldn't object. And so I think——

Mr. FRIEDMAN. If I may interrupt you, Congressman, you are not talking about a straight-out criminal violation such as bank robbery.

Mr. CARR. No; I'm talking about draft-related cases.

Mr. FRIEDMAN. This doesn't apply to draft-related cases. In most draft-related cases he is under an outstanding induction order of some sort. It's not the equivalent. There is a big difference between enlisting and submitting to induction.

Mr. CARR. Thank you for your clarification. I misunderstood what you said.

I would like to make a comment. For crimes unrelated to military registration, many of which are State crimes and State prosecutions, there is this phenomenon of dumping, and it goes on today, severely hampering the best efforts of an all-volunteer force.

Mr. FRIEDMAN. This is why the Defense Department's policy is not just directed to the Federal Government. Our manual speaks only to our U.S. attorneys, but the Defense Department policy has been across the board, both Federal and State.

Mr. CARR. I understand that; but I also add to the record that the recruitment quotas imposed on these very unfortunate recruiting officers around the country, with a great deal of pressure, putting their career on the line, compromises that policy.

I think you have a serious problem, that hopefully the Justice Department could exert leadership.

Mr. KASTENMEIER. I would like to comment: Paradoxically, if we go to a draft course we can no longer be said to be interested, as you suggested in your testimony, in individuals who enlist under coerced conditions not being properly motivated to become an effective member of the Armed Forces. We are no longer interested in motivating people. When you have a draft you take people whether or not they are motivated. At that point your rationale goes out the window.

Mr. FRIEDMAN. We would probably change the manual to say as required: "Those who have demonstrated criminally antisocial behavior, are not fit to be put into the barracks with other soldiers, and we don't want to subject the Army and people in it to that kind of relationship."

Mr. KASTENMEIER. I understand your answer. Thank you, Mr. Friedman.

I realize your limitations here this morning in terms of your ability to respond to all questions that we might like to ask. We will be pursuing this with the Attorney General further, and hopefully before many days go by we will be able in our followup hearings to get a more comprehensive policy statement from the Department as well as from Selective Service and the administration. Hopefully all this will occur before we vote on the matter. I don't know if that is possible or not, but we will attempt to do so.

We are glad you did come to Madison, Mr. Friedman. Thank you for your testimony.

Next the chairman would like to introduce Judy Goldsmith, vice president of the National Organization for Women. She is a native of Wisconsin, received her B.S. from the University of Wisconsin, Stevens Point, and went on for a masters at the State University of New York.

We have your statement which we will be happy to accept for the record.

[The statement of Ms. Goldsmith follows:]

STATEMENT BY JUDY GOLDSMITH, VICE PRESIDENT-EXECUTIVE

I am pleased to appear before you today to address the question of women and the draft registration as it relates to civil rights and the administration of justice. As Vice President-Executive of the National Organization for Women, the largest national organization dedicated to the eradication of sex discrimination, I am representing over 100,000 women and men in this country who are committed to equality for women.

The National Organization for Women opposes a reinstatement of the draft registration. And, since a registration serves no other purpose than as a preparation for a draft, we are also saying that we oppose the draft. We oppose it strongly, and we oppose it for both men and women.

NOW is against the registration of young people precisely because it is a response which stimulates an environment of preparation for war. Too many of us still remember the senseless killing and destruction in Vietnam—which NOW also protested—and believe that violence is too easily seen as the "ultimate solution." We reject that solution, and believe that too many are willing to wage war with others' lives. National defense and self defense is one thing; aggression for economic self-interest is quite another. To fight a war for oil is to deny that the inherent rights of all human beings must take precedence over the economic self-interest of a few.

In short, we do not believe that the present situation is one which justifies disrupting or endangering the lives of our nation's youth.

Further, if the objective is really to increase the number of people capable of being mobilized in a short period of time and to improve the quality of the national defense, the easiest way to accomplish this without increasing the war atmosphere in the world and without involuntarily disrupting the lives of young people is to remove the sex discriminatory restrictions on women in the military. Without these practices, women recruits would be in far greater supply and of a higher caliber than additional male recruits. Under existing practices, female numbers are depressed to a current 8 percent of the armed forces (programmed to increase to about 12 percent by 1985.) The current discriminatory practices are based upon outmoded concepts of both women's role and combat.

The caliber of women recruits is consistently higher than that of their male counterparts. Women score higher on military entrance tests, have a significantly higher education level, and once in the service, present fewer disciplinary problems and lose less time from active duty. The discrimination against women in our society and in the military also costs our nation untold millions, possibly billions of dollars each year in recruitment costs. The Army, for example, spends $3,700 to recruit what it terms a high quality male—for a high quality female recruit it spends $150.

We therefore maintain that, if the discriminatory practices that limit women's participation were removed, the quantity of the personnel in the All Volunteer Force as well as the quality would be higher, and the ability of the AVF to provide a secure national defense for the nation correspondingly improved.

There is another problem which has been getting increased attention recently. It appears that the real weakness in our present military preparedness is the problem of retaining skilled personnel in critical areas.

An article by former Wisconsin Congressman and Secretary of Defense Melvin Laird, recently appeared in the Washington Post. In it, recalling that one of his last acts as Secretary of Defense was to end draft calls, he remarks that "with that step, the United States embarked on one of the more important ventures in its recent history: we would endeavor to become the first nation in modern times to maintain a large standing military on an all-volunteer basis."

However, outlining some problems that have developed with the original concept, he says, "Retaining qualified people after their first, second, and third enlistments is an acute problem and will get worse unless remedial action is taken. The services have been losing over 75 percent of those completing their first enlistment since 1976. About 30 percent of males enlisting do not even complete the first term." It is interesting that Mr. Laird specifies "males," because again, in regard to retention, the record for women in the military service is better than that for men.

But retention is a very serious problem. A Wall Street Journal editorial of a month ago, agrees that "the most pressing problem of the armed services is that they are bleeding dry of experienced personnel. The most skilled servicemen—who operate and maintain sophisticated submarines, electronic equipment, planes, computers, and the like—are leaving the military in record numbers." The editorial concludes, "Even if we reinstituted a full peacetime draft, we would still face the retention problem for experienced personnel. If we are to maintain a serious fighting force, the immediate problem is to retain the skilled servicemen we already have . . ." The problem has been, of course, that military pay has not kept pace either with inflation or with the comparable civilian job market. In that, it is simply another extension of the economic crisis that plagues our nation. But clearly a draft, which has an even lower retention level, is not the answer.

I have focused thus far on NOW's contention that the present call for a registration or subsequent draft is first, unnecessary and unjustified, and second, not a solution to the real problems with our state of military preparedness.

I would like now to address another issue that is of profound concern to us, and one which has been raised by the Administration's proposal to register women.

We believe that the question of including women has diverted attention from the real question, which is whether there should be a registration at all.

But beyond that, as an organization committed to equality between the sexes in this country, we must address the question of women and conscription. And our conclusion, based on NOW's purpose and policy, is that if there is registration and/or draft, that as with any governmental action, it must treat the sexes equally. In other words, women must be included.

I should like to make very clear, however, that if registration is reinstituted, and if it does include women, we would not then support it, since we oppose this call for a registration, for the reasons stated earlier. We would simply have a non-sexist registration to be opposed to, rather than a sexist one.

However, the question of including women raises a number of issues that have received widespread attention since the President first opposed it, and NOW's position is this:

If a registration and draft is instituted, we believe that it must include women. As a matter of fairness and equity, no draft or registration that excludes one half of the population in 1980 simply on the basis of gender could be deemed fair. Young people who have common aspirations, hopes, and education will resent women being excluded. Women will pay with more limited opportunities and rights. Our nation will pay by limiting its resources. All will pay by the constant exclusion of females and their priorities from the nation's decision-making.

Any registration or draft that excluded females would be challenged as an unconstitutional denial of rights under the Fifth Amendment. Two developments since the termination of the Vietnam-era draft weigh heavily on the question of women's inclusion in any future registration and draft and lead to the conclusion that excluding women would be found unconstitutional.

The first of these was the establishment in 1976 by the Supreme Court of a more stringent review standard for sex-biased classification and the subsequent application of this standard to legislation containing sex-biased classifications. The second development is the consistently high performance of women in all military categories to which they have been admitted as the result of recent changes in military policy. I will not expand upon this second development as being less germane to the focus of this Committee, except to say that the present and historical contributions of women to our nation's military services have been outstanding, and no one, at any level, has seriously proposed that women should not continue to play an active part.

There is no doubt that any attempt to institute registration and a draft excluding women would result in legal action, and one of the legal problems would arise as a result of the form the Administration's recommendations have taken in regard to inclusion of women. They propose the registering of all women in the affected age category, equally with men. However, they anticipate actually drafting women in much smaller numbers, in a ratio of approximately 1 to 5. Further, they have stated that they have no intention of asking for removal of the combat bar, meaning that if women are drafted, they would not be assigned to combat units. The inconsistency is intolerable and the legal ramifications of that inconsistency are clear: either the sexes are treated equally or they are not; either women and men are included on an equal basis at all stages or they are not. This "now we're equal, now we're not" approach will create confusion, resentment, and legal turmoil.

And even as we maintain that justice as well as pragmatic considerations necessitate the equal inclusion of women, we realize the irony inherent in requiring such sacrifice from the more than half the nation's population which is not yet included in the protections of its Constitution. There are those who are saying, "Well, if you want equal rights, you also have to take equal responsibilities." No one knows that better than women. We have increasingly taken on a fair share, and more than fair share, of domestic responsibilities, financial responsibilities, civic responsibilities, citizens' responsibilities. We have the responsibilities; we don't have the rights. Two hundred and four years after this nation's founding, we are not yet in the Constitution, and the Equal Rights Amendment is not yet ratified, though some people are clearly acting as if it is and demanding equal sacrifice of women when there is no equal protection.

The resentment that many women consequently feel is likely to be a factor in their reaction to the requirement to register, along with their attitudes about the justifiability of the military situation that gives rise to the call for a registration. Women who are concerned about serving in the military without equal protection of the laws are justified in their concerns. Ironically, the combat bar puts women in greater jeopardy, not less. While women may not be assigned to "front line" combat units, they will still be somewhere in combat areas. And since, with the increasingly technological nature of modern warfare, the "front line" is more and more difficult to identify and define, they will be exposed to the dangers of combat. They will do it at considerable disadvantage, however, because they will not have had the combat training adequate to defend themselves, nor will they have the advantage of benefits and opportunities for advancement available only to those who hold combat-designed positions.

This nation must recognize realities. We know that the pool of available young men will decline 25 percent in the next dozen years. We know, too, that women today are an essential part of our nation's work force and are a key part of the trained and trainable technical pool of young people required to operate a modern military. In the past we have deluded ourselves that women were protected from the ugliness of war. They were not—they have served, they do serve, and, as each day passes, the likelihood of their serving—in every capacity, as volunteers or draftees—increases.

Therefore the questions of justice, Constitutionality, and civil rights that relate to conscription must now include women. In the past, where exclusion of women was challenged on constitutional grounds, it was upheld with little analysis. That has changed.

Reality has ended the debate about whether women will serve in the military. They do and will, but at what cost to themselves?

TESTIMONY OF JUDY GOLDSMITH, EXECUTIVE VICE PRESIDENT, NATIONAL ORGANIZATION FOR WOMEN

Ms. GOLDSMITH. Thank you very much, Mr. Chairman.

It's indeed a pleasure to appear before your committee this morning, and particularly a pleasure to appear in my home State from which I am temporarily displaced while I serve my term of office in Washington.

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Mr. Kastenmeier. Thank you. This has been an excellent statement. I am interested in the event that we have registration or subsequently a draft, and women are not included, what legal plans you have. I think you indicated you might plan to challenge it as unconstitutional.

Ms. Goldsmith. Yes. Since our organizational bylaws require that a suit of such magnitude would have to be approved by our national board of directors, I cannot say specifically that we would ourselves challenge it. There is a very good possibility, and should there be such a suit by any other party we would support it.

The ACLU has already indicated that it will sue if a male-only registration were instituted, and we will support that.

Mr. Kastenmeier. I don't know if you have given thought to this or not, because I think there is a considerable likelihood of something happening: registration being reinstituted without reference to women.

Ms. Goldsmith. Yes.

Mr. Kastenmeier. Whether you have given much thought as to whether you're likely to prevail on a constitutional challenge or whether the enactment of the equal rights amendment would either help or not matter with reference to standing of such a suit on challenging this distinction. Do you think it would matter whether or not ERA were enacted?

Ms. Goldsmith. Whether it would matter to such a suit, or to the question of registration?

Mr. Kastenmeier. Whether it would matter as far as the success of such a challenge.

Ms. Goldsmith. I believe that it would. What has stood in our way for all of these years is the persistent refusal of the Supreme Court to declare women as a suspect classification as they have done with race and other categories under the 14th amendment. That is the main reason we need the equal rights amendment attached to the Constitution, so that women are covered under the Constitution.

If the ERA were passed it would have the same effect. It's clear that male-only registration or draft does in fact disadvantage both sexes.

If I could take one moment to clarify one aspect of our position. There have been people who misunderstood and thought that we are "for women in combat" because we feel that the combat bar must be removed. But we are opposed to women in combat and we are opposed to men in combat. We believe strongly if people feel that war is bad, if war is a terrible experience, it's a terrible experience for people and clearly that applies to men just as much as to women.

The fact is the women in the military are not protected by it. Women are allowed to be in combat support units but if the enemy is ungracious and attacks from the rear they have no defense. The combat bar provides women with no real protection and as we have said, women will continue participating in the military and will be subject to jeopardy.

They pay by reduced opportunities both within the military—there are approximately 70 to 75 percent of the positions closed to women because they are either combat positions or can only be gotten through a combat designation.

Women suffer that discrimination and men suffer the discrimination of being the ones, if there is a male-only draft instituted, as being the ones called upon to make that special sacrifice.

I believe presently it cannot be justified even on a constitutional basis and I believe that such a challenge to a male-only draft would be made.

Mr. Carr. I would like to congratulate you on an excellent statement. I particularly liked your focusing on the retention versus replacement strategy. I don't think it is efficient from a military point of view or from an economic or energy point of view to focus your resources on replacement rather than retention.

However, if that is the case, it implies that NOW supports increasing the incentives available to the retention policy and while you get quite close to it in your statement, you don't hit the nail on the head. Is there a need for equivocation or can you explicitly state that NOW supports improved incentives to maintain the All-Volunteer Force?

Ms. GOLDSMITH. Yes, we do. Our positions historically have always supported a good wage for working people and the people in the military, particularly the people at advanced levels are not making a decent wage and are paying for the privilege of staying in the military. There is another impact I didn't state specifically in the testimony.

Much of our equipment and hardware, like many of our ships and airplanes, would not be usable if we have a military crisis because there are not the experienced military personnel to use them.

There has been talk of battleships being taken out of mothballs, and the response of the Department of Defense has been that is not justified because we don't have the skilled personnel to operate the ones we presently have.

Mr. CARR. I thank you for that explanation on your testimony. I do, however, think that there has been, by all people—I hate to use these stereotypes—the liberal end of the spectrum has not supported increased military budgets even to the extent of increasing the pay incentives for an All-Volunteer Force and have thus helped to undermine the All-Volunteer Force quite efficiently, I think.

The conservativist end of the spectrum has not liked the All-Volunteer Force to begin with and was not unhappy that Congress didn't give adequate attention to that. I think now they could be a poor leader in correcting that oversight.

Ms. GOLDSMITH. We feel it would be possible to raise the pay of affected categories to a reasonable level if we spent less on hardware.

Mr. CARR. Second, I'm glad you enlisted the support of the Department of Defense. I think it ought to be stated to repeal the legislative prohibitions against women in combat.

That is one we can't lay on the administration. That is a congressional decision, congressional imposition and your organization, I think, can be an important ally in getting rid of it.

I think it is important to note, however, that the people in the Congress who have the greatest interest in the draft also tend to be the people in the Congress who undermine the pool of available talent by being the people in the Congress who will not report out a bill to repeal the combat prohibition for women.

Ms. GOLDSMITH. I have noticed that——

Mr. CARR. They are the people in Congress who are engaging in the self-fulfilling prophecy on two grounds, that retention, availability and attractiveness, both men and women, is strapped and handicapped and then when it doesn't meet its promise, they say it didn't work and now we are back to the draft again.

I welcome your statement and your support and I have no further questions.

Mr. KASTENMEIER. Thank you, Ms. Goldsmith.

The Chair is sorry to announce that Mr. Railsback's plane was caught in Chicago. Because of the snow, he will not be able to get up here for the hearing. We will have to catch up with him in Washington.

I would like to ask the witnesses to summarize their statements so we can get through all of those who need to be heard this morning.

At this point, I would like to call a distinguished attorney, Mr. Curry First, who is a practicing lawyer from Milwaukee, in the law first of Perry, First Reiher & Lerner. Since 1970 he has represented a number of selective service registrants, both administratively and in court, and he is familiar with the implications of law affecting people who might be called upon to register.

We do have your statement, together with attachments. It is very interesting and useful and those will be accepted and made part of the record.

[The statement of Mr. Curry First follows:]

STATEMENT BY CURRY FIRST, ATTORNEY

INTRODUCTION

The people of this country are presently in the process of again considering issues surrounding the draft and militarism—registering bodies for military service, changes in the historical treatment of individuals conscientiously opposed to participation in war of any form, and the mobilization of various resources and institutions to accomplish these ends. Lest anyone underestimate the significante of registration at this time, one need only look to the comments of National Security Advisor Brzezinski on the need for new military strategies.[1]

As we discuss reinstituting draft registration and everything that portends, it is incumbent the people and public officials step back and look at the costs. Compulsory registration and its aftermath will inevitably affect our constitutional guarantees. The Fifth Amendment to the United States Constitution provides the government shall not deprive any person of liberty without due process of law. Registration affects our liberties; its reinstitution must be examined within the confines of due process protection. Our Constitution in the First Amendment protects religious liberties and freedoms and those have been broadly defined to include deeply held moral and ethical beliefs. This Subcommittee on Civil Liberties must focus on these, our most basic human and civil liberties.

In rethinking registration and the draft, numerous legal/political issues demonstrate the extreme price of reopening our country to registration, selective service, and our local boards. It is one thing for the Congress to begin registration; it is quite another to do so without an objective, exacting scrutiny of the enormous human and institutional expenses that must be incurred. I will attempt to identify and elaborate on some of these legal issues. These issues are all negative costs to reinstituting registration. Registration is not innocuous, indeed, it is only fair to precede the word with draft as it is draft registration. The legal issues involved include:

(i) The human, institutional, and monetary resources that must be mobilized to effect draft registration and deal with the anticipated tens of thousands of resisters or non-registrants;

(ii) Male only draft registration will inevitably create not only significant litigation and the prospect of an unconstitutional ruling, but also lend support to even greater resistance;

(iii) Reinstituting draft registration will produce the concomitant free speech First Amendment issue of what to do with those who speak out against registration and urge our youth to resist;

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[1] ". . . beginning of a serious review manifesting itself in the Secretary of Defense's defense posture statement. . . . being able to respond to nuclear threats in a flexible manner . . . I am saying that the United States, in order to maintain effective deterrents has to have choices which give us a wider range of options than either a spasmodic nuclear exchange or a limited conventional war." New York Times, Week in Review, March 30, 1980, col. 6, p. 8.

(iv) Legal effect of draft registration with or without exemption for individuals conscientiously opposed to participation in war in any form;

(v) Applicable statute of limitations and "continuing offense" issue;

(vi) State of mind whether the law will require specific intent or some other element in successfully prosecuting a non-registrant.

The present law—the 1967 Selective Service Act—in 50 U.S.C. § 451 et seq. requires every male citizen of the United States and every male person in the United States, who on the day or days fixed by presidential proclamation for registration is between 18 and 26 years of age, must register. The days for registration as set by presidential proclamation in the Code of Federal Regulations provides the duty to register is a continuing one in that males must register within five days of attaining the age of eighteen. Registration occurred at the offices of Selective Service local boards. Registration was accomplished by the registrant writing his name and place of residence on SSS Form 4 and the registrar (local board clerk) filling out the Registration Card SSS Form 1 based on the information provided by the registrant and on personal observation. After giving the male a Selective Service number, the local board would mail each registrant his Registration Certificate SS Form 2.

This certificate is to be mailed within five days after receiving the Selective Service number and the statute contemplates making of "rules and regulations . . . relating to the . . . possession of such certificate" including registration certificates and prescribes a criminal penalty for violation of those rules and regulations. 32 CFR § 1617.1 states every person required to register must have his certificate "in his personal possession at all times," and invariably led to the question—"what do I do in the shower?" The criminal penalty for nonpossession is the same as not registering and is set forth in 50 U.S.C. § 462 and carries a maximum punishment upon conviction of imprisonment for not more than five years or a fine of not more than $10,000 or by both such fine and imprisonment. The elements of the nonregistration criminal offense are:

(i) The proscribed intent, in this case knowingly or willfully;[8]

(ii) Refusal or failure to fulfill one of the requirements relating to registration including the duty to present oneself for registration and the duty to give required information; and

(iii) That the defendant was a person required to be registered under the statute.

RESISTANCE AND IMPACT ON FEDERAL JUDICIARY, DEPARTMENT OF JUSTICE, AND CRIMINAL JUSTICE SYSTEM

Congressperson Kastenmeier's statement of March 26, 1980, prophetically raised the question—"Are we in danger of creating a whole new class of criminals?" He hypothesized that if there is two percent draft registration resistance and if we require only 19 and 20 year old males to register, then the new criminal class is composed of nearly 80,000 young people in this country. Presently the federal courts annually have nearly 40,000 new criminal cases filed and the present population of the U.S. Bureau of Prisons is approximately 24,000. What will be the impact of draft registration and concomitant resistance on the federal appellate and trial judiciary (including law clerks, clerks of courts, filing cabinets, and enhanced delay of all civil cases), caseloads of assistant United States attorneys, speedy trial act, work assignments of FBI agents, U.S. parole and probation offices, Bureau of Prisons population and personnel, U.S. taxpayer funds to court appointed attorneys for indigent defendants, etc.? One immediately questions the President's projection that $13 million will be sufficient funds to reinstitute draft registration. Of course, the greatest cost and the biggest human impact will be on those individuals who resist and become stigmatized for life as criminals.

How did this country during Vietnam deal with the tens of thousands of resisters. As an example, in the United States District Court in fiscal year 1971, there were 2,973 total defendants. Well over one-half 1,937 were not convicted. Significantly, of this 1,937 figure, 1,701 were dismissed prior to having a trial before a federal judge or a jury. Accordingly, of the 2,973 men indicted, only 1,036 were convicted and this percent is at great variance from the normal percentage rate of federal defendants convicted. What do these figures suggest about the system:

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[8] See *Kaohelaulii v. United States*, 389 F.2d 495 (9th Cir. 1968).

(1) The 2,978 total defendants is miniscule in terms of the total number of people who were resisters. Even of those draft resisters who became federal defendants, the federal judicial and criminal justice system evidentally realized it could not cope with close to 3,000 felony cases added in one year; the result was a very low percentage of convictions. These figures suggest a paradox because the total number of men indicted is obviously much, much smaller than the total number of men who refused induction. The apparent reason for the low number of indictments at 2,978 is that the entire federal criminal justice system knew it could not handle in any sense of the word the number of resisters. Accordingly, for numerous reasons, the system did not indict or charge the majority of men who refused induction as the cases were sent back based on technical legal deficiencies by assistant United States attorneys to the local boards. But even this practice creates serious human/legal issues. It creates an equal protection issue of selective prosecution. One's sense of fairness towards government is disturbed recognizing others similarly situated avoided prosecution.

It would seem that if we are going to be serious about draft registration and make failure to register a federal crime, then we must apply the law equally and fairly across-the-board. All this apparently suggests that resuming draft registration is indeed egregious and that the proponents of resumption must make an extremely compelling case.[3]

EQUAL PROTECTION LEGAL ISSUES ASSOCIATED WITH MALE ONLY DRAFT REGISTRATION

Although men in the past have constitutionally challenged male only draft registration or induction and although those challenges have without exception failed,[4] those challenges are out of date based on United States Supreme Court law, vis-a-vis, sex discrimination within the last three–five years. For example, in *Craig* v. *Boren*, 429 U.S. 190 (1977), the Supreme Court held a state law prohibiting the sale of 3.2 percent beer to males under the age of twenty-one and to females under the age of eighteen lack sufficient rational justification and was unconstitutional under the equal protection clause of the Fourteenth Amendment to the United States Constitution. The court held the Oklahoma state statute gender-based differential constituted an invidious discrimination against males eighteen–twenty years of age in violation of the equal protection clause. The court rejected the State of Oklahoma's statistics that sex and age present special treatment with regard to regulating drinking and driving.

In *Stanton* v. *Stanton*, 421 U.S. 7 (1976), the Supreme Court held an age of majority for child support set by the statute at eighteen for females and twenty one for males violates equal protection.[5]

In any event, this will be an explosive political issue and one which will perhaps tie up the courts and surely encourage males to resist simply for that reason alone. Of most significance, it will understandably lead to the belief by many of our people that our government is again codifying sexism and traditional barriers women thought they had finally broken. Conversely, one might find that should females be included in registration, then the resistance will be increased with women coming forward with a new political force and one which is perhaps not inclined to accept traditional male values and sentiments toward the use of arms, wars, etc. Women will ask themselves individually whether they can cooperate in a draft registration system which is a predicate to military induction and war. Many will answer no. As the American novelist and poet, Alice Duer Miller said in 1915:

> "*Why We Oppose Votes For Men*
>
> "1. Because man's place is in the army.
>
> "2. Because no really manly man wants to settle any question otherwise than by fighting about it.
>
> "3. Because if men should adopt peaceable methods women will no longer look up to them.

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[3] Projecting significant resistance is not unrealistic, see e.g., "Anti-Draft Activity Mushrooms Around Nation", War Resisters League News,, March–April, 1980 (reproduced Appendix A).

[4] E.g., *United States* v. *Baechler*, 509 F.2d 13 (4th Cir. 1974).

[5] Cf. *Frontiero* v. *Richardson*, 411 U.S. 677 (1973).

"4. Because men will lose their charm if they step out of their natural sphere and interest themselves in other matters than feats of arms, uniforms and drums.

"5. Because men are too emotional to vote. Their conduct at baseball games and political conventions shows this, while their innate tendency to appeal to force renders them particularly unfit for the task of government."—Alice Duer Miller, 1915.

FREE SPEECH LEGAL ISSUES ASSOCIATED WITH "ENCOURAGING NONREGISTRATION"

Both the House and Senate Bills provide schemes for punishing conduct amounting to obstructing military registration; both treat the offenses as Class B felonies. S. 1722 § 1115 Obstructing Military Recruitment or Induction; H.R. 6915 § 1315 Wartime Impairment of Military Service Obligations. The 1967 Selective Service Act in 50 U.S.C. § 462(a) provides: "Any person . . . who knowingly counsels, aids, or abets another to refuse or evade registration for service . . . [shall be subject to criminal prosecution and penalties]." This issue from a legal prospective is exceptionally complicated[6] involving detailed legal definitions and explanations of "knowingly", "counseling", "aiding". It creates vital First Amendment free speech issues and brings back to memory Julian Bond's remarks as a Georgia State legislator-elect when he counseled young men to refuse induction and to burn their draft cards, *Bond* v. *Floyd*, 385 U.S. 116 (1966). The legal point is that one can expect the movement in opposition to draft registration to include many individuals actively and openly counseling resistance. The government will have pressure to respond and the free speech clause of the First Amendment to the United States Constitution will be challenged. See remarks of United States District Court Judge John Curtin, Buffalo, New York, in sentencing five peace activists, "The Right to Speak Up on War", New York Times, June 20, 1972, col. 3, p. 37.[7]

CONSCIENTIOUS OBJECTION AND DRAFT REGISTRATION

In the past the courts have uniformly rejected all challenges to nonregistration where in the individuals argued their religious or moral dictates forbid them from registering. The courts have held that insistence upon registrations as a prerequisite to a claim for such exemption is not an infringement upon one's First Amendment rights of religious freedom. *United States* v. *Bertram*, 477 F.2d 1329 (10th Cir., 1973); *United States* v. *Crocker*, 380 F.Supp. 998 (D. Minn. 1970), Aff'd 435 F.2d 601 (8th Cir. 1971).

Conscientious objection—an individual conscientiously opposed to participation in war in any form—is an issue for many individuals confronted with mandatory registration and now also appears to be a matter of controversy for those looking beyond draft registration to the Selective Service exemption/deferment process. The people of this country and its government must never, within the Selective Service system context, eliminate the recognition afforded to conscientious objectors and the protection given to religious and moral and ethical beliefs. See, Clancy & Weiss, "The Conscientious Objector Exemption: Problems in Conceptual Clarity and Constitutional Consideration," 17 Maine L.Rev. 143 (1965); "The Legal Relationship of Conscience to Religion: Refusals to Bear Arms," 38 U.Chi. L.Rev. 583 (1971); "Religious and Conscientious Objection," 21 Stan. L.Rev. 1734 (1969); "Conscientious Objectors: Recent Developments and a New Appraisal," 70 Colum. L.Rev. 1426 (1970); Martin, "The Conscientious Objector: Legal Definition of Religion and First Amendment Government Neutrality," 2 St. Mary's L.J. 81 (1970).

To withdraw, within any context, conscientious objector recognition will inevitably demonstrate such a callousness to liberty, individual conscience, and religious freedom that massive resistance will follow. Any related attempts to deny judicial review to individuals—indicted nonregistrants or individuals refusing induction—will represent an invalid attempt by the legislative branch to unconstitutionally curtail federal court jurisdiction.

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[6] *Keegan* v. *United States*, 325 U.S. 478 (1945).

[7] "If I may interject at this moment, it seems to me that there may be a strong argument made that the time spent, the efforts spent by you, the action taken, would indicate that your love of country is above that of most all other citizens because you had the moral outrage to put into action that which you believe. If people had the same sense of morality as you did, it would seem to me that the war would have been over a long time ago."

RACE AND MILITARY SERVICE

As this Subcommittee examines draft registration issues you must keep in mind its civil liberties mission as a Subcommittee. In focusing on a continuation of the all-volunteer army or a new system for soldiers, race in the civil liberties context must be examined. Eleven years ago Congressperson John Conyers, Jr. from Michigan testified at hearings before the Subcommittee on Administrative Practice and Procedure of the Senate Judiciary Committee which was holding hearings on the Selective Service System. He pointed out that the selection process is particularly discriminatory against the poor, the black, and the working class. "In 1966, for example, high school graduates comprised 51.1 percent of all those conscripted into this country's military forces, while college graduates comprised only 4.8 percent." p. 316. His study found "that over 40 percent of non-white, draft-eligible men had once been inducted into the military while not even 30 percent of the white eligible men had been inducted. The Marshall Commission reported in 1967 that, of those qualified for military, 30 percent of the black men are drafted as compared with 18 percent of the whites." *Ibid.* See generally, Lee, "The Draft and the Negro," 55 Current History No. 323 (July, 1968) at p. 28.

CONCLUSION

Proponents of draft registration resumption have not begun to convincingly establish the present necessity for commencing a massive system of registration and selective service. This country, with the facts and evidence now present, should not revert to such a system of compulsion and a system which will immediately implicate millions of our youth. It is also ironic at this time that as the merits of the present all-volunteer army are discussed, the military, in a dramatic turn, is again meeting its recruiting quotas, "Armed Services Find Recruiting Is On Rise Again", New York Times, March 25, 1980, col. 1, p. A16. In concluding it is appropriate to quote Senator Mark Hatfield who has been one of the few elected officials in Washington who has consistently fought against militarism, e.g., long-time sponsor and supporter of S. 880 World Peace Tax Fund.

"Registration will do nothing to enhance our military preparedness, instead, it will unnecessarily cause division in this country . . . the truth is that the freedoms of millions of men and women are being sacrificed for nothing more than a symbolic gesture."

[From the WRL News, March–April 1980]

Anti-Draft Activity Mushrooms Around Nation

In what is probably the greatest surge of protest activity since the reaction to the U.S. invasion of Cambodia and the Kent State shootings ten years ago, demonstrators have held rallies and meetings on hundreds of college and high school campuses throughout the country.

On virtually every day since Carter's January 23 State of the Union address announcing his call for draft registration, there has been anti-draft activity somewhere in the country.

The WRL national office has been swamped by letters, visitors, and phone calls from people wanting to join the League, parents who are concerned about their children, women and men pledging to resist registration or leave the country, students organizing on their campuses, people wanting to file as conscientious objectors, teachers and organizers needing WRL speakers and literature.

The reaction to Carter's proposal has been swift and dramatic, and has put the Administration on the defensive. This represents quite a change from a few weeks ago when Carter's popularity was rising and the only demonstrations covered by the media were ones calling for the nuking of Iran and ejection of Iranians from this country.

Administration spokespersons have taken great pains to separate registration from the Draft. Carter, in the best traditional Orwellian "doublespeak," has gone so far to say that registration "will make the draft more avoidable" because it'll deter the Soviets—not quite as simple as "war is peace," but give him a few more months of practice. However, that tactic has fooled few. In an obvious slip, Presidential Advisor Zbigniew Brzezinski told 250 student leaders on February 15 that a registration was needed because not enough people were willing to volunteer.

There seems to be a lot of confusion among proponents as to why draft registration is necessary. Some say it is because the U.S. would not have sufficient troops for a sudden-breaking, long-lasting conventional land war in Europe. Others say we must be prepared to guarantee the flow of foreign oil. The New York Times (February 10) editorialized draft registration is essential "to signify support for the idea of service and sacrifice in defense of *national interests*" (emphasis added), but is not needed because quotas aren't being met or for a mass mobilization.

CARTER'S REGISTRATION PLAN

Carter has proposed that all men and women who were born in 1960 and 1961 should register at their local Post Office,[1] giving their name, address, date of birth, and social security number—but not receiving a registration card. The registration will provide no exemptions (as classification would, were it to be instituted). Currently, the maximum penalty for non-registration is 5 years and/or $10,000. Despite these penalties, an estimated million or more men didn't register or refused induction during the Indochina war. Carter has proposed that the penalty be lessened, perhaps to a misdemeanor (1 year and/or $1,000 maximum). Registration might begin as early as this summer.

A NBC public opinion poll taken the last week in January showed a sharp division in the country: 70% of 25 year olds and older favored registration, while 60% of 18 to 24 year olds opposed registration.

Carter appears to have seriously miscalculated the reaction to his announcement. He was feeling pretty invulnerable to criticism figuring that the Iranian and Afghanistan situations would give him a free ride into draft registration.

On January 24, the day after Carter's announcement, 30 people attended a demonstration in New York City's Foley Square. A 15-foot long War Resisters League Vietnam era "Resist the Draft" banner was dusted off for the occasion. The same day at Pittsburgh's Federal Building 40 people attended a rally. Seven were arrested including a mother of six draft age children. Fifty people blocked a recruiting table at the University of California (Berkeley) campus. The next day 250 people turned out on Berkeley's Sproul plaza, site of many past protests, for a demonstration organised by WRL/West and Berkeley Students for Peace.

From then on hastily organized meetings and rallies began to blossom on campuses across the nation. The first period of nationally coordinated actions was February 9–12, immediately following submission of Carter's February 8 proposal to Congress. On Saturday, February 9, 2,000 people rallied at Times Square in New York City then marched to Carter's campaign headquarters. The following Monday 26 rallies were held on campuses in California, including another one of 2500 people in Berkeley. The next day rallies were held on campuses all over the Northeast. Several of these campuses reported having the largest demonstrations since 1970. Just from the demonstrations we are aware of, we would estimate about 40,000 have participated in the first three weeks of activities.

Last Spring a large number of groups formed around the country to oppose the registration threat which was being pushed by certain members of Congress, but was opposed by Carter. A national coalition, the Committee Against Registration and Draft (CARD, 245 Second Street, NE, Washington, D.C. 20002), was formed to coordinate legislative efforts against registration. On September 12, Congress voted overwhelmingly against registration.

Activities planned for the immediate future include a "National anti-draft teach-in project" from late February through April called by the United States Students Association (USSA), and a March 22 national March on Washington called by the ad hoc National Mobilization Against the Draft. This coalition, initiated by the Democratic Socialist Organizing Committee, also includes the WRL, USSA, CARD, Nader's Public Interest Research Group, Women Strike for Peace, among other groups. The politics of the demonstration call for opposition to registration, the draft, and threats of war.

WRL has been stressing not only the obvious relationship between registration and the draft, and the danger of nuclear war, but also the need to oppose the economic conscription of the All "Volunteer" Force (AVF). Our opposition to the draft most certainly does not mean support for the AVF. The military is aware of the close connections, as noted in a 1978 Pentagon study: "major resistance to registration could adversely affect voluntary enlistments and seriously aggravate all-volunteer force recruiting difficulties . . . on the other hand, if unopposed, registration could help recruiting and strengthen the U.S. military posture."

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[1] It's been reported that Post Offices have been chosen partly to give a non-military appearance to registration.

War Resisters League is not only recirculating its strongly-worded "Statement of Affirmation and Draft Resistance," but is developing new material on the draft and the world situation which catalyzed the call for registration. In particular, we have available a Draft Resistance Kit for $3, which has a sample of these materials with particular emphasis on local organizing. WRL is asking members to urge their Congressional representatives to vote against the $45 million requested by Carter for the Selective Service System. If you wish to have a WRL speaker on the draft, contact your WRL local group or call Grace Hedemann, (212-228-0450), who is coordinating WRL speakers out of the WRL national office. Better yet, form your own local chapter of the War Resisters League. Give them a draft and they'll give you a war.

DIRECTORY OF TRAINERS

The North American Nonviolence Training Network has issued a Directory of Trainers which provides a list of resources for people who are seeking assistance in social change efforts. The Directory lists over 250 nonviolence trainers in North America skilled in various kinds of training. Copies of the Directory may be purchased by sending $2.50 (includes postage) to NANTRAM, 4722 Baltimore Avenue, Philadelphia, Pa. 19143.

TESTIMONY OF CURRY FIRST, OF PERRY, FIRST, REIHER & LERNER

Mr. FIRST. Thank you. Good morning to people present and Congresspersons.

There has been a lot of discussion about the weather. The weather outside in Madison today is disturbed and angry at the prospect of instituting draft registration.

As a lawyer discussing the topic today—the law of draft registration—I wanted to initially emphasize my belief the Congresspersons have a special role. This issue should not necessarily be the viewpoint of one's constituents or politics. Rather the issue is law and justice within the jurisdiction of this subcommittee.

This subcommittee has jurisdiction over courts, civil liberties, and the administration of justice. If draft registration returns, I will first discuss the impact of registration on the courts. I will give remarks on nonregistrants. Will there be a lot of nonregistrants and, if so, how will that affect the U.S. court system?

In terms of civil liberties, there are many issues involved. Registration and the draft involves the compulsion of registration, sex discrimination if we have a male-only registration, and critical free speech issues with regard to urging people not to register. There are also issues involving conscientious objectors. Will we continue our historical treatment toward recognizing conscientious objectors?

Concerning the administration of justice there are important issues to scrutinize. What will be the overall criminal penalties? What will the statute of limitations be?

As we discuss reinstituting draft registration it is incumbent on the people of this country to look at the costs. Compulsory registration and its aftermath will inevitably affect our constitutional guarantees.

The Fifth Amendment to the United States Constitution provides the Government shall not deprive any person of liberty without due process of law. Registration affects our liberties; its reinstitution must be examined within the confines of due process protection.

Our Constitution in the First Amendment protects religious liberties and freedoms and those have been broadly defined to include deeply held moral and ethical beliefs. This Subcommittee on Civil Liberties must focus on these, our most basic human and civil liberties.

In rethinking registration and the draft, numerous legal/political issues demonstrate the extreme price of reopening our country to registration, selective service and our local boards. It is one thing for the Congress to begin registration; it is quite another to do so without an objective, exacting scrutiny of the enormous human and institutional expenses that must be incurred.

I will attempt to identify and elaborate on some of these legal issues. These issues are all negative costs to reinstituting registration. Registration is not innocuous; indeed, it is only fair to precede the word with draft, as it is draft registration.

Congressperson Kastenmeier's statement of March 26, 1980, prophetically raised the question: "Are we in danger of creating a whole new class of criminals?" He hypothesized that if there is 2 percent draft registration resistance and if we require only 19 or 20 year old males to register, then the new criminal class is composed of nearly 80,000 young people in this country.

Presently the Federal courts annually have nearly 40,000 new criminal cases filed and the present population of the U.S. Bureau of Prisons is approximately 24,000.

What will be the impact of draft registration and concomitant resistance on the Federal appellate and trial judiciary—including law clerks, clerks of courts, filing cabinets—and enhanced delay of all civil cases, caseloads of assistant U.S. attorneys, Speedy Trial Act, work assignments of FBI agents, U.S. parole and probation offices, Bureau of Prisons population and personnel, U.S. taxpayer funds to court-appointed attorneys for indigent defendants, et cetera?

One immediately questions the President's projection that $13 million will be sufficient funds to reinstitute draft registration. Of course, the greatest cost and the biggest human impact will be on those individuals who resist and become stigmatized for life as criminals.

There has been discussions about statistics. The official statistics from the U.S. Court of Administration Office listed during 1 year, during the Vietnam resistance, 1971, the number of selective service cases in the U.S. Federal courts. These are broken down in each Federal court in the country.

The total number of defendants, cases dismissed, conviction rates, and breakdown of the sentences are indicated.

If the subcommittee would like, I would offer that as an exhibit. They are official Government statistics and are available to the Department of Defense, Justice, and the White House.

Mr. Kastenmeier. We will receive that.

Mr. First. What is significant about the 1971 statistics is that in that year only 3,000 men were indicted by grand juries of some selective service violation.

What does it mean that during the height of Vietnam we only had 3,000 men indicted during 1 year? What it does show is that the system, the Department of Justice, the Selective Service System and I would like to think the compassion of this country could not tolerate having 50,000 criminal people and that the system simply did not indict many, many people who resisted. If you look at the number of 1 year, 3,000, it is only 60 men per State.

What happened during the Vietnam era is we had a great number of people who resisted. They refused induction or alternative service. The system couldn't handle it. The Selective Service System and U.S. attorneys in most cases reviewed the files and sent the cases back to selective service. The men were never charged.

That creates enormous problems of equity, of equal protection, and selective prosecution. If you are one of the few people indicted, convicted, and imprisoned and if you recognize other people simply situated avoided prosecution, then one's sense of equal justice was shattered. This impacts particularly when you discuss selective prosecution and race. The next to last page of my paper makes brief comments about race and selective service.

I think that all of these kinds of facts and projections suggests that resuming draft registration is egregious, that proponents of resumption must make an extremely compelling case and that such has not and cannot be made.

I want to comment on the civil liberties issues affected by registration for males only. In the past, men have challenged as unconstitutional the law requiring only males to register. All of those cases lost. In every case, the court held the law constitutional in that respect. I believe that those old cases will not stand up today because of Supreme Court decisions in the last 3 to 5 years. I will not discuss those. They are in my papers.

It relates also to what the woman from NOW said about the equal protection clause and suspect classification. It is a serious issue whether all-male registration will withstand constitutional challenge. There is also an important political effect if we have men and women now registering. The resistance will be significantly increased. Women will come forward with a new political force and one not inclined to accept traditional male values toward the use of arms, war, selective service and induction. Women will ask whether they can cooperate in a draft registration system which is a predicate to war. Men and women will answer no.

Alice Duer Miller wrote a poem in 1915. The title of her poem written in 1915 is, "Why Women Oppose Votes for Men."

> One, because man's place is in the Army. Two, no manly man wants to settle any question otherwise than by fighting about it. Three, because if men shall adopt peaceful methods women will no longer look up to them. Four, because men will lose their charm if they step out of their natural spheres and interest themselves in other matters than feats of arms, uniforms and drums. Five, because men are too emotional to vote. Men's conduct at baseball games and political conventions show this, while an innate tendency to appeal to force renders them particularly unfit to the task of government and voting.

Associated with the return to registration is the fact we are then going to have to define, from a criminal defense posture, people encouraging young men and women not to register and not to cooperate with the system. These people will be exercising traditional rights of free speech under the first amendment.

The present Selective Service law, 50 U.S.C. section 462(g), makes it a Federal felony for a person, by speech or otherwise, to knowingly counsel, aid, or abet another person to refuse service. It is a felony.

I want to conclude with two other issues: Conscientious objection and draft registration.

There have been murmurings from Selective Service if we now return to registration and as we go beyond registration, to selective service, and classifications, we are going to want to cut back on the traditional protection given to conscientious objectors. It is critical that the Congress keep in the legislation in section 456 the present recognition and treatment we have for conscientious objectors.

We do not have anything in the past law that gave a conscientious objector an exemption from registration. The few court cases on that issue held that a person who's a conscientious objector, who had deeply held moral and religious beliefs, could not use that as a defense when indicted for not registering.

The court said if you are a conscientious objector you register and then submit your objection to the Selective Service. If we return to registration and there is a time period before classification and induction starts, this committee and Congress should consider recognition for some type of conscientious objection from registration.

I think at a minimum that if a law provides for registration and if someone refuses to register and if that person as a Federal criminal defendant can prove that at the time that he refused to register she/he was conscientiously opposed to registration in any form that that must be a defense for nonregistration.

Another important issue in terms of law and registration is one's state of mind, the intent required when a nonregistrant is in a criminal defense posture in court. Will specific intent be required or general intent? We must think these issues out carefully and put a premium on protecting civil liberties and civil rights.

I want to conclude with a one sentence quote last month from Senator Mark Hatfield, one of the few elected officials in Washington fighting against war and militarism.

> Registration will do nothing to enhance our military preparedness. Instead, it will unnecessarily cause division in this country. The truth is that the freedoms of millions of men and women are being sacrificed for nothing more than a symbolic gesture.

Thank you.

Mr. **Kastenmeier**. Thank you for a first-rate statement. Your statement in its entirety is very scholarly and it will be an excellent and useful addition to our record. We appreciate it.

I have only one question in view of the time. I wanted to ask you about the possibility of decriminalization of registration. What if we geared up the Selective Service System and if the President issued some sort of Executive order detaching individuals from criminal penalties——

Mr. **First**. It is the lesser of two evils. It would have a tremendous benefit for civil liberties. We will not make criminal offenders out of people who refuse to register.

But the White House is telling this country it is vital to national security so it seems it would be hypocritical to say registration is so important but it is voluntary.

Mr. **Kastenmeier**. So probably they can't have it both ways. They will end up having to impose criminal penalties?

Mr. **First**. I think so.

Mr. **Kastenmeier**. Do you think the Senate or House versions of the revision of the Federal criminal laws ameliorate these problems? Do you have a choice between them?

Mr. **First**. I'm not that familiar with the new criminal code provisions in the House and Senate as they affect selective service.

The only thing I have seen is they will provide a lesser penalty or newly classified misdemeanor.

But when you talk about putting people into jail for resisting military service, if you move away from 5 year to the lowest amount of time possible it is going to have an effect.

Mr. **Carr**. I, too, want to congratulate you on a fine statement. I suspect you handled a few of these cases at some time or another.

Mr. **First**. I hope I don't have to handle any more.

Mr. **Carr**. I want to congratulate you for bringing to this committee's attention something I don't think has been focused on. The Selective Service System has never been repealed and merely has laid dormant by two Executive orders, and there is a whole system of regulations promulgated by the Selective Service System of old.

Have those regulations been updated in any serious faction, to your knowledge?

Mr. **First**. My understanding is that the regulations that implement the whole system are still in 32 CFR Part 1600. They were updated prior to the ending of induction. They passed a bill of rights for registrants giving them procedural due process. It was a single improvement. I understood that those things are on the books and probably could get implemented quickly.

Mr. **Carr**. As you point out, it seems that if the Selective Service System is taken out of the deep freeze, it involves, for example, the old classification, registration card, registration certificate. No one has really focused on that. There are certain crimes, as you point out in your remarks here, that are occasioned by burning your draft card. Are we back to that? We are now burning our credit cards and we may be back to burning our draft cards.

I think you have aptly pointed out that it isn't just mere registration and the enforcement consequences of mere registration. It is the enforcement of crimes that result from registration.

You refer to the carrying of the card. Have you taken that train of thought further to see what other criminal consequences might pertain under the existing set of regulations if they are unchanged by going to mere registration?

Mr. **First**. A kind of introductory point in answering that question:

The current statute in the code provides the same punishment for all offenses. Someone stopped by a police officer for a minor traffic offense, who did not have his card with him could have gone to jail for 5 years. The law was not enforced that way but it was possible.

After registering you must carry your card. People encouraging people not to register or telling someone not to carry their card to a rally, any of those people could go to jail for 5 years.

If you didn't provide your Selective Service Board with any change in your status, you were subject to a 5-year penalty. If you failed to do anything, A to Z, your name could be in front of a Federal grand jury.

Mr. CARR. Thank you.

Then if we are successful in registration, there is a lot more thought to be given to the rules and regulations under the Selective Service System.

Mr. KASTENMEIER. Thank you very much for your appearance here this morning.

Next we go to three panels.

First, because I think they can be brief and because they have been patiently waiting, I would like to call forward two members of the Madison City Council.

I would like to invite Sheila Chaffee and Larry Olson to come forward and share with us the city of Madison's actions by voter referendum and the city council's actions as they see it. I might add that in some cases the members of the panels may be opposed to each in point of view but they should provide interesting testimony.

TESTIMONY OF ALDERMAN LARRY OLSON AND ALDERWOMAN SHEILA M. CHAFFEE

Mr. OLSON. First, I have to say that the opinions expressed here today are those of mine alone. However, I do believe that I express the view of my colleagues who do agree with me on this issue.

I intend to discuss the registration issue as well as our April 1 referendum held here in the city. My views will be predicated upon three assumptions: that the United States must accept the need for a strong national defense; second, it is our Government's duty to be prepared to defend our country; three, our voluntary Army is not the answer. And currently this is the only alternative.

I don't believe the voluntary Army is working. The costs involved in promoting and soliciting men and women are too high. The reenlisting cost is extremely high. It leads to mercenaries. The voluntary Army has its faults and I don't believe it is our sole solution. However, I do accept registration and the draft as a supplement to the voluntary Army.

I strongly support the registration of all available people. The issue before Congress is registration, not the draft. Despite the hysteria and paranoia by some in this country, I do not accept the theory that registration with the Government automatically leads to the draft, or registration leads to the goals of wanting to go to war. I don't believe that.

The experience we learned in Vietnam is one no one in this country will ever forget. I don't believe this country will ever get involved in another country's civil war again. If America enters a war it will only be if we are directly attacked. I cannot see support again for another Vietnam. Congress and the American people will not support another involvement in such a conflict as Vietnam but we must be prepared for a direct attack on our country.

Nobody wants war, that is obvious. The country is not war-oriented. We must be able to defend our own country, however.

On April 1, the citizens of Madison had a referendum before them which read: "Do you support the national registration and draft for 19- and 20-year-old men and women?"

I opposed the placement of this referendum on the ballot for two reasons. First, I don't support the concept of placing issues which are not related directly to the city on our ballot. Those who supported the placing of the referendum on the ballot believed it affected the citizens of Madison. If we carried this further we could have a referendum on everything that Congress does because directly or indirectly it affects the taxpayer.

The second reason for opposition to the referendum was that the wording of the question made the outcome totally meaningless. We had four questions rolled into one. (*a*) Do you favor the draft; (*b*) Do you favor registration; (*c*) 19- and 20-year-olds; and (*d*) Men and women? No way could I have worked out a such one-sided question.

The citizens of Madison by the wording of the referendum question knew the outcome was assured before we voted on it. In fact I was wagering that 90 percent of the people would vote no on the referendum.

The city should have gone with the original worded referendum question, do you support registration or not? That would have given us a clearer indication. There were 20,000 people who voted yes and 31,000 voted no. If you add to this the 17,000 people who failed to vote on the referendum, but went to the polls and didn't vote one way or another, this means less than 50 percent of the people who went to the polls opposed the referendum. In my district 1,530 people voted on the referendum and the question failed by only 47 votes. I believe it's impossible for either Ald. Chaffee or myself to read anything into this referendum because of the wording and the voting total, as well as to understand what the 17,000 who failed to vote were trying to tell us.

I do know that all of the polls I see state nationwide between 60 and 70 percent of the American public favors registration. I do know Madison is too liberal and I don't believe we are representatives of the State or even the country. I think if we want to take an example we should look at the Republican primary where Ronald Reagan did poor here in the city of Madison but won decisively throughout the State.

I do believe that Congress must insure our country is protected against military assault. If the draft is needed to supplement voluntary service I will support it. An individual can't decide which war we enter just as he can't decide whether to attend school or pay his social security taxes.

If we don't want the Federal Government controlling our lives, then we on the city council shouldn't be hypocrites in accepting financial aid to the city. Let us, however, be prepared if we should be attacked.

[The statement of Mr. Olson follows:]

STATEMENT OF LARRY OLSON

The opinions expressed here today are those of mine alone. However, I believe they do express the view of most of my colleagues on the City Council who agree with me. I intend to discuss the registration issue, as well as the April 1 referendum.

My views are predicated on three assumptions: First, the United States must accept the need for a strong national defense; second, it is our government duty to be prepared to defend our country; three, our volunteer army is not the answer and currently this is the only alternative. It is not working, it is too expensive, costs of promoting and soliciting men are too high, re-enlisting cost is too much and it leads to mercenaries or hired killers. The volunteer army has its faults and is not our sole solution.

Accepting these three assumptions, I strongly support the registration of all available people. The issue before Congress is registration, not the draft. Despite the hysteria and paranoia by some in this country I do not accept the theory that registration with the government automatically leads to the draft. Further, I beg to differ strongly with those who go one step further and say more mere registration leads to or provokes one to go to war. And to those, I can only say that we all learned from the experience in Vietnam. We will never forget. I do not believe this country will ever get involved in another country's civil war again. If American enters another war, it will be only if we are directly attacked. This country and Congress has all learned from the past twenty years and I cannot see support again for another Vietnam. Congress and the American people will not support another involvement in such a conflict. But, we must be prepared for a direct attack on our country. We must be prepared to call up the men to defend our country. We must be prepared. Nobody wants war. Our country is not war-orientated, but we must be able to defend our country. This we expect from our national leaders.

On April 1, the citizens of Madison had a referendum on the ballot which read: "Do you support a national registration and draft for 19 and 20 year old men and women?" I opposed the placing of this issue on the ballot for two reasons: First, I don't support the concept of placing issues that are not directly related to the City of Madison on our ballot. Our City Council has a habit of continually addressing issues that are State or Federal in body. Those who supported the placing of the referendum on the ballot thought it affected citizens of Madison. Well, if we carry this theory through then we would have a referendum on everything Congress does because indirectly everything that you do affects us. Everything you do affects the taxes and the taxpayer. I believe in the separation of powers. We have a National, State and Local government. This is a National issue. Second, the wording of the question made the outcome totally meaningless. We actually had four questions rolled into one. Thus, assuring a no vote before the vote was even counted. In fact, I was wagering that 90 percent of the people who voted would vote no. The question asked: (a) Do you favor the draft; (b) do you favor registration; (c) 19- and 20-year-old; and (d) men and women. No way could I have worked out a more one-sided question and yet 20,000 voted yes and 31,000 approximately voted no. To this you add 17,000 who failed to vote on this referendum and thus less than 50 percent of those who voted actually opposed the referendum. Incredible. In my district, for example, 1,533 people voted on the referendum and the question failed by only 47 votes.

I really believe it is impossible for either Ald. Chaffee or myself to read anything into this referendum because of the wording and the voting total, as well as to understand what the 17,000 who failed to vote were trying to tell us. However, I do know that all the polls I have seen state that between 60 and 70 percent of the American public favors registration and the draft. I do know that Madison is far too liberal and not representative of the State or our country. A perfect example is the Republican Presidential Primary election where Congressman Anderson swamped Reagan in Madison but lost the state decisively 40-28 percent as well as losing all the primaries to Reagan. As a result of our far liberal leaning and standings I am sure Congress does not hold their breath on all of our deliberations. Anyway, I hope they don't.

As one who desires as little government control over the individual as possible, I do believe that Congress must insure that our country is protected against military assault. If the draft is needed to supplement our volunteer service, I support it. After all, the individual can't decide what war he chooses to enter just like he can't decide whether or not to attend school or pay social security taxes. We have government rules and regulations and we must follow them. We don't want federal government controlling our lives and we shouldn't by hypocrits in accepting federal grants and aids.

To support registration does not mean that you are war mongers. On the contrary, the soldier above all people, craves for peace. He must suffer and bear the deepest wounds and scars of war. But always in our ears ring the ominous words of Plato, that wisest of all philosophers, "Only the dead have seen the end of war." Let us be prepared lest we too perish.

Mr. KASTENMEIER. Thank you. You represent the 12th District here.

Now I would like to call on Mrs. Chaffee who represents the 10th Aldermanic District.

Mrs. CHAFFEE. Thank you especially for giving the opportunity for Alderman Olson and me to come before you today. My comments will be informal and summary in nature.

My primary legislative duty is to deal with street lights, garbage cans and it doesn't often happen that we come to talk with our congressional representatives about issues that deeply and strongly affect us. I would like to think we are a community of great social conscience and therefore these important issues affecting our Nation are taken up on the municipal level but that is not the case. It has more to do with the fact that we have a disproportionate number of 19- and 20-year-olds in our community due to the existence of the University of Wisconsin and the Madison Area Technical College.

These young people have come to our community and their parents have entrusted their security to our community. Because of the history of civil unrest and violence that this community has experienced in the past 10 years directly having to do with the Selective Service System, it becomes a matter of great importance to the city of Madison whether the draft is reinstituted or not.

It is our streets on which the demonstrations occurred. It is our children who in the past 10 years have had to seek shelter in the basement of Randall School as the draft resistors headed down Spooner Street to protest with the sheriff's deputies in hot pursuit and the tear gas cannisters flying. These are direct results, and if it seems informal and anecdotal it is the nature of the question of why constitutional questions need to be debated.

When the President proposed registration for 19- and 20-year-olds, the Council had before it the resolution which it passed on a voice vote strongly opposing the institution of registration. However, some of the folks on the Council thought this was a good issue to take to the voters.

The referendum was: Do you favor registration? It didn't address the question registration of who, under what circumstances, and the important questions that this panel is hearing, what would the implications be to those required to register. It was too simple, in other words.

As a result some of us on the Council changed or proposed a substitute wording that was specific to the President's proposal. It did include the word "draft" as well as registration because it was our presumption that there is no point to a registration if you don't have a draft. This is not registering for Scouts. This is registering for the draft.

The citywide totals on this are interesting. Of the 49,499 votes cast on the referendum question, 30,950 voted no, 19,560 voted yes.

I broke out those totals and looked at the aldermanic districts, 2, 4, 5, 6, 8, 9, 10, 11, 13. This may not make a great deal of sense to the Congressman from Michigan but those are the aldermanic districts of the central city, the highest concentration of the affected population.

Of those 22,000 votes cast, 15,992 were negative votes, 6,048 were affirmative. This tells me there is a strong feeling within the center of the city against the institution of the draft. This is the area where we have the most affected people and this is the area that has had a history of violence associated with the Selective Service System.

For our purposes, while the Federal courts may have its problems, it is my assessment on the basis of past history that on the local arena, the course will be full.

I would remind you that within the last few weeks the last prisoner convicted of a crime associated with the Vietnam protest era was just released from prison. We have had a decade of trying to draw this community back together and reinstitute confidence in the police, the sheriffs, the courts. Trust has been established between the institutions and the people of our community.

Before making your final decisions on these questions, I would ask that you consider the basic questions that our community had to consider before it voted on the referendum issue.

The first question is: Do better national affairs justify such a dramatic step? Would the registration of 19- and 20-year-olds in our country and community incline the Iranian-crazed society to let our hostages go? Will that put the fear of God into the Russians and have them go back across their own border from Afghanistan? It is not my thought it will.

If this is a symbolic gesture, this community will pay a high price for the symbol.

The second question I would like to consider is would reinstitution of the draft be the most cost-effective way to restore order in the world? I think we have had ample testimony this morning that it will not. What you will get is a collection of names of warm bodies in the least skilled segment of our population.

The only things these folks have to offer at this point is they are there and vulnerable.

Congressman Kastenmeier, you and I are old enough to remember a draft that was involved in a just war and a draft accompanied by civil sacrifices. Remember meat rationing, gas rationing, sugar rationing, Victory gardens, paper drives, tin can drives. There was a great deal of civil sacrifice that went with that earlier draft.

Until some of those sacrifices are instituted in the civilian population to curtail our consumption of nonrenewable resources, until we are willing to sacrifice the snowmobiles, the second car, to give up a little bit, I think sacrificing by 19- and 20-year-olds is an awful step to take indeed. And it brings into play the strain to our judiciary system if the draft is reinstituted.

[The statement of Alderwoman Chaffee follows:]

STATEMENT OF ALDERWOMAN SHEILA CHAFFEE

Congressman Kastenmeier, members of the committee: Thank you for the opportunity to contribute to your proceedings. For those of us elected officials whose legislative decisions are usually limited to street lights, stop signs and garbage pick-up, it is indeed rare that we are invited to speak on a national issue which will have a profound effect on our local unit of government.

I would like to think that the people of our City have a highly developed social consciousness and therefore have given public consideration by way of a referendum to the question of the reinstitution of the draft. But I'm afraid the real reason is that we have proportionately more 19- and 20-year-old men and women than other cities do because of the location of the University of Wisconsin, Madison and the Madison Area Technical College in our City. Parents elsewhere have, in effect, entrusted to us their children for the difficult years of entry into adulthood and the City of Madison is responsible for their public safety.

Consequently, when the President proposed to Congress his plan to register all 19- and 20-year-old men and women, it did not surprise me that a resolution opposing that plan was introduced to the Common Council. That resolution passed on a voice vote. Some among my colleagues felt that the question should be put to a referendum.

As a result, the Council voted to place the question "Do you support a national registration and draft for all 19- and 20-year-old men and women?" on the April 1 presidential election primary ballot. City-wide the referendum received 19,560 yes votes and 30,939 no votes.

However, in those wards where there exists a higher density of the population who would be affected by the draft (aldermanic districts 2, 4, 5, 6, 8, 9, 11 and 13) of 22,040 votes cast, 6,048 were yes and 15,992 were no.

Those vote totals indicate to me a very strongly held opposition to a reinstitution of the draft by a centrally located group of City residents capable of organized resistance. This resistance from the same geographic area has precedence in the past decade.

By the time the draft was abandoned in the wake of the Vietnam War, anti-draft protest demonstrations had cost this City and County hundreds of thousands of dollars in police protection and judicial proceedings, to say nothing of the damage Madisonians suffered to persons and property. During those years, angry demonstrators elicited police reactions which endangered uninvolved citizens in a most dangerous fashion. I can best illustrate it anecdotically. There was the day my now 20-year-old daughter, was a student at Randall Elementary School. That day anti-draft demonstrators choose to march down Spooner Street toward the Selective Service Office on Monroe Street. Sheriff's deputies were quartered during the emergency in the parking lot of the Camp Randall Stadium two blocks away. Violence erupted mid-march as the demonstrators approached Randall School. Police and County Sheriffs deputies lobbed tear-gas to disperse the demonstrators. That tear-gas caused the children and teachers to seek shelter in the school basement. Some demonstrators were arrested, prosecuted and tried for their participation in that demonstration. No one dealt with the children's new image of "our friend, the policeman"!! It was shattered for years.

I was not an alderman at that time. However, the reinstitution of the draft causes me concern not only for my one remaining child at Randall School, but for the district and City I serve. Our current police priorities are to prevent sexual assaults against individuals, robbery, murder and other forms of violence against individuals and property. If the draft is reinstituted, municipal police protection and county court action may well be diverted from these life-saving activities.

Additionally, as a result of the civil unrest in years past due to the draft, public confidence in the protective agencies in our city and county would certainly be eroded again. It has taken them a decade to reestablish their image as peace-officers in whom people place their trust. Furthermore, only a few weeks ago the last Madison person convicted of a crime associated with the Vietnam anti-war movement was released from jail on parole with the support of the Madison Common Council.

This city weathered those years hard and at great cost. I would hate to start the decade-long cycle all over again.

While it is necessary for you as members of the Judiciary Committee to consider the impact on the judiciary system—federal, state and local—of the reinstitution of the draft, I would hope as individual members of Congress you would consider the following questions:

1. Do international events justify such a radical step as reinstitution of the draft?

Last fall, a bill to require men to register for the draft was so badly beaten in the House that its proponents decided there was no use even debating it in the Senate. What has happened since then to change the picture?

Two events are cited. First, a band of Iranian fanatics, with no responsible government to control them, imprisoned several dozen Americans in our own embassy.

This hideous action is contrary to international law, and the president has sought to oppose it through diplomatic—and not military—means. Then, Soviet troops intervened in an internal power struggle in Afghanistan, supporting an anti-U.S. faction. The president close to retaliate economically and on the sports pages, not militarily.

Will registering, or even drafting, our 19-and 20-year-olds persuade the Iranian crazies to release our innocent countrymen? Will it send the Soviet troops back home from Afghanistan? I think not.

2. Is reinstitution of draft registration the most cost-effective way to restore world order in a troubled time?

The president proposes that $10 million will be adequate to reactivate the Selective Service system. What this would buy is a pool of young people who could be activated within 21 weeks—just three weeks less than without registration—plus three months of basic training to make them combat-ready.

Most people 19 and 20 still lack the training and experience to take their place in civilian life. As a group, they offer the military little more than warm bodies.

The main reason for pinpointing these young people is that they are the most vulnerable, and least experienced in organized political resistance, in our society. Has the president selected the kind of people who could meet a sudden need for disciplined forces ready for military action? I think not.

In summation, I would direct the committee's remembrance, which only those of us over-forty have.

In times of true national emergency, the draft has been accompanied by civilian sacrifice. Remember gas, tire, meat, and sugar rationing?

Remember when we felt the draft was justified because the rest of us were doing our part, too, on the home front? Are we now ready to sacrifice our 19- and 20-year-old men and women, so that we can hold on to our air conditioning, single-rider cars, and other energy-intensive amenities of easy living? I think not.

Mr. KASTENMEIER. Mrs. Chaffee, you have articulated very well your point of view and your interpretation of the referendum results in Madison.

One question I have, and I don't know the answer to this, did any other community in the United States have concurrently a referendum on this question?

Mrs. CHAFFEE. I'm not aware of any.

Mr. KASTENMEIER. As the matter stands this is the only community which has spoken at all about it. As Mr. Olson says, this community may not be typical of the communities in the rest of the country.

Mr. CARR. May not be typical but it probably aligns itself with East Lansing pretty well.

I don't have any questions, Mr. Chairman. Just to congratulate you on drawing the bridge between what we do at the Federal level and some of its local tax base considerations in terms of law enforcement.

Maybe I could get a comment out of Mr. Olson about the local law enforcement costs and consequences.

While you might think that it is something you are willing to put up with, do you disagree that there would be a local law enforcement consequence?

Mr. OLSON. That's hard to say.

Mr. KASTENMEIER. On behalf of the committee we thank you both.

Next I would like to call forward two well-known teachers from the University of Wisconsin. I solicited their testimony and asked them to appear this morning. I expected they might take different sides of the issue, one in support and one in opposition.

Prof. Gordon Baldwin has been a professor of law—including both criminal and constitutional law—at the University of Wisconsin

Law School since 1957. He was for a number of years associated with the U.S. Naval War College, and in 1975–76 counselor on international law for the U.S. Department of State.

Prof. Joseph Elder has taught sociology and South Asian studies at the University of Wisconsin. He has been a consultant to the Ford Foundation, Peace Corps, and the Smithsonian Institution. He also is a member of the Quaker Church.

TESTIMONY OF PROF. GORDON BALDWIN AND PROF. JOSEPH ELDER, UNIVERSITY OF WISCONSIN

Prof. BALDWIN. I appreciate your courtesy. I do have some thoughts that summarize my prepared statement.

First, I do serve as campus director for officer education programs, ROTC. I realize conscription will enhance our program.

Your committee's focus upon the practical problems generated by a national registration system is commendable. We all agree, I think, that the present enforcement framework is cumbersome. Indeed the statutes are prolix and on initial reading, nearly incomprehensible. Its construction, by inspiring litigation, is wonderful for lawyers.

For example, the first sentence in one important section, runs on and on, marred by not a single semicolon for 880 words. It is a disgraceful piece of draftsmanship which would earn a student an "F." With respect to clarity both the Senate and House bills are infinite improvements.

I favor military conscription. On policy grounds I see no alternative. We need not have a perfect system, only a workable one. We cannot have a perfectly just method of conscription—perfect justice does not exist in this world. We can have a constitutional system and, I hope, inspire the Supreme Court to supply better rationale than that in the 1918 Selective Draft cases [245 U.S. 366].

A critique of that decision is easy—indeed modern commentary is not much better than that rendered by a law professor in a 1931 article [see Black, The Selective Draft Cases, 11 B.U.L. Rev. 37 (1931)].

My support for registration now and conscription to follow rests on four major assumptions.

First, our present reliance on volunteers does not work. We rely on economic incentives which draw most heavily upon the poor, the least skilled, the least trainable and the least privileged parts of our population. Conscription has revealed that significant parts of the nation are not physically or mentally equipped to serve.

Indeed it is likely that with conscription, or at least its threat, we would improve the quality of our soldiers. I believe all segments of society should serve, and that if pay and benefits were raised, our most privileged, most competent and most dedicated citizens would probably not volunteer. Military service is a civic service that should be demanded of all who are needed.

Second, to forge a credible military force takes months, even years. While we might institute a draft quickly, assuming all the administrative machinery were in order, we cannot train soldiers quickly. Indeed one of the merits of even the modest proposal being studied now is that it may generate a few more enlistments; it may encourage more inquiries into officer education programs. I am not a dispassionate observer.

Third, military strength is an indispensible component of diplomacy. A nation's ability to influence events is directly dependent on an adequate, well-trained and balanced force. The world contains predatory politicians, and the nations they lead can become rapacious. To think otherwise is self-deception. To discount the deterrent effect of armed force is equally foolish.

Fourth, military service is honorable service. To equate it with slavery dishonors our history and discounts the wisdom of men whose views we all respect. See for examples, the several essays of Justice Oliver Wendell Holmes, including his 1895 address, "The Soldier's Faith."

Of course registration, and ultimately conscription, limits freedom. Compulsion is not exceptional in the real world; in an interdependent society compulsion is commonplace. We require youth to attend schools; we proscribe the subjects of study, and we exact obedience to law regularly. Discipline to be effective cannot be optional. Civil liberties embody civil responsibilities, and I believe military service is one. Legal problems, rather technical ones, are doubtless present.

First, you will examine the need for criminal penalties for a failure to register. However, it ought to be possible to create an automatic registration system that would prevent some offenders from becoming criminals. Correlating social security data with income tax filings would, for example, help to identify many of the more competent young people.

We could, moreover, require colleges to identify their students, just as we require them now to cooperate with immigration authorities. Ultimately it should be a crime to "knowingly" fail to fulfill an obligation which the person is aware of having. S. 1722 embodies this standard.

Second, it may become necessary to penalize a few who deliberately counsel, and incite resistance. The First Amendment law in this general arena is confused. I don't think there has been much improvement on the formula advanced by Learned Hand; namely whether the gravity of the evil, discounted by its improbability, justifies such invasion of free speech as is necessary to avoid the danger. [Cited and approved in *Dennis* v. *United States*, 341 U.S. 494 (1951).]

Third, the question of whether females may constitutionally be exempted from registration is not difficult. In view of several recent decisions upholding classifications and rules operating in the foreign service, and in the military, I predict that the female exemption would be sustained. Recent court decisions reveal a hands-off attitude toward acts of Congress in the area of military justice and foreign policy.

Fourth, I remind you that no law is enforced totally, nor can it be. We always will have some law breakers. Law does its job if it supplies deterrents. I believe that if sevice is required, the vast majority of America's young people will serve, if not happily, then dutifully.

Mr. KASTENMEIER. Thank you very much for your statement and one which I think does deal with a number of the issues before us.

Professor Elder. Inasmuch as a number of people have already made the points I wanted to make I will focus on those points in my written testimony which have not been addressed.

The first point I want to make concerns the Carter doctrine, of which the call for renewal of draft registration is a part. I see the Carter doctrine as stemming from a selective interpretation of events occurring in Afghanistan and Iran. I wish, as a South Asia specialist, to question that selective interpretation.

I wish to question President Carter's judgment, and that of his advisers, in defining the events in Afghanistan as "the greatest threat to peace since the second world war." One can think of other possibly more serious threats such as the Korean war, the Soviet invasions of Hungary and Czechoslovakia, the Cuban missile crisis, and the Vietnam war.

I wish to question President Carter's belief, and that of his advisers, that the situation in Afghanistan can measurably improve as a result of a signal that the United States is reinstating draft registration. To the contrary, such a signal might well stiffen Soviet solidarily and undercut those voices in the Soviet Union calling for Soviet withdrawal from Afghanistan.

In the recent past President Carter, and his advisers, have been dramatically wrong in interpreting events in Iran and Afghanistan. Note, for example, President Carter's 1978 New Year's toast to "Iran, (which) because of the great leadership of the Shah, is an island of stability in one of the most troubled areas in the world." Note also our Government's approval in the fall of 1979 of the deposed Shah's visit to the United States, a visit that triggered the sorry train of events at the U.S. Embassy in Tehran.

I am prepared to argue that the President's call for draft registration emanates from the same complex of misinformation and misperceptions as his 1978 toast, his 1979 approval of the Shah's visit to the United States, and his 1980 statement that Afghanistan poses the greatest threat to world peace since the Second World War. I am prepared to argue that, despite President Carter's impressions, draft registration is no more necessary today in April 1980 than it was in April 1979 or in April 1978.

The second point I wish to make concerns my conviction that the reinstatement of draft registration will do little to enhance rapid military mobilization, should such a need arise. A Congressional Budget Office study in November 1978 estimated a 13-day-earlier delivery of recruits to training camps with peacetime registration than with postemergency registration.

A revised Selective Service System estimate reduced the difference to 7 days. In either case, the training camps would require 3 or 4 additional months to train recruits for active service, thereby effectively eliminating any meaningful difference between a 13-day or a 7-day-earlier delivery of recruits to training camps.

On January 16, 1980, Selective Service Director Bernard Rostker's statement was released that the Selective Service System preferred beginning draft registration only after a war or national emergency had been declared. Rostker's statement contributes to my conviction that draft registration as proposed by President Carter would not contribute in any significant way to strengthening our national defenses.

The third point I wish to make concerns my conviction that the reinstatement of draft registration, with the strong likelihood of a subsequent draft, will probably generate a number of specific dangers to civil liberties and the administration of justice in the United States. These include:

(a) The danger of introducing the inequities and injustices of all prior military registrations and drafts. Registration is only a prelude to the draft. Characteristically, the burdens of past drafts have fallen most heavily on the young, the poor, and the minorities. Gen. Lewis B. Hershey, for many years head of Selective Service, acknowledged that no draft can be fair. With age, class, and minority relations gradually improving in the United States today, do we want to reopen the age, class, and minority wounds of the sixties and seventies?

(b) The danger of overlooking the rights of conscientious objectors. At the moment there is great confusion over what rights of conscientious objectors, if any, will be incorporated into the draft registration legislation. The Senate and the House versions of the bill differ. And the Selective Service System's report on conscientious objectors, prepared in the summer of 1979 by Maj. Donald A. Gurwitz for Col. Walter Thompson, recommends that such decisions be made as:

> Complete rescission of the conscientious objector exemption modeled on the World War I statute; and, as an alternative, restriction of the conscientious objector exemption to practicing members of religious sects that specifically prohibit participation in military service, elimination of the requirement that reason be given for the denial of a claim for conscientious objector classification, and a specification that Selective Service determination on claims shall not be subject to review by any other agency, official, or court of the United States. . . .

Such recommendations as a conscientious objector shall be subject to loss of liberty without provision of reason, as the Selective Service System shall define itself as exempt from such prior Supreme Court decisions as in the *Seeger* case and in the *Welsh* case, and as judicial review shall be abolished for selective service determinations appear to be blatantly unconstitutional.

But this does not seem to have bothered the Selective Service System. A 1977 study for the Selective Service System recommended that 10 regional "stations" be established to house conscientious objectors—"stations" which, in their outline, look suspiciously like internment camps.

If indeed there is to be draft registration, then it behooves those drafting the legislation to study the evolution of the Supreme Court rulings concerning conscientious objection, rulings which have addressed the complexities of determining in today's world what is a satisfactory definition of "religious" and "belief." Otherwise the religious repressions from which some of our forefathers fled the Old World may be transported to the New World. And the United States may again become a nation from which people depart, as they did during Vietnam war days, in search of religious freedom.

In my presentation I have outlined six specific threats which I feel draft registration poses to civil liberties and the administration of justice in the United States. In conclusion, I would like to return to my earliest point, namely, that as a specialist on South Asia I believe that President Carter and his advisers have responded inappropriately to the events in Afghanistan. I believe that President Carter's call for reinstating draft registration is uncalled for and potentially damaging both to the well-being of our Nation and to world peace. And I subscribe to the view that in this situation the greatest protection to civil liberties and the administration of justice in the United States is to oppose the reinstatement of registration for the draft.

[The complete statements follow:]

STATEMENT OF GORDON BALDWIN

I am Gordon Baldwin, Professor of Law at the University of Wisconsin-Madison. Additionally I serve as the Campus Director of Officer Education Programs, popularly known as the ROTC programs. Naturally I speak only for myself. My teaching interests focus upon constitutional, international, and criminal law.

Your committee's focus upon the practical problems generated by a national registration system is commendable. We all agree, I think, that the present enforcement framework is cumbersome. Indeed the statutes are prolix, and on initial reading, nearly incomprehensible. Its construction, by inspiring litigation is wonderful for lawyers. For example, the first sentence in one important section runs on and on, marred by not a single semicolon for 380 words. It is a disgraceful piece of draftsmanship which would earn a student an "F." [50 U.S.C. App. § 462.] With respect to clarity both the Senate and House bills are infinite improvements.

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Second, to forge a credible military force takes months, even years. While we might institute a draft quickly, assuming all the administrative machinery were in order, we can not train soldiers quickly. Indeed one of the merits of even the modest proposal being studied now is that it may generate a few more enlistments; it may encourage more inquiries into officer education programs. I am not a dispassionate observer.

Third, military strength is an indispensable component of diplomacy. A nation's ability to influence events is directly dependent on an adequate, well-trained and balanced force. The world contains predatory politicians, and the nations they lead can become rapacious. To think otherwise is self-deception. To discount the deterrent effect of armed force is equally foolish.

Fourth, military service is honorable service. To equate it with slavery dishonors our history and discounts the wisdom of men whose views we all respect. [See for examples, the several essays of Justice Oliver Wendell Holmes, including his 1895 address, "The Soldier's Faith."]

Of course registration, and ultimately conscription, limits freedom. Compulsion is not exceptional in the real world; in an interdependent society compulsion is commonplace. We require youth to attend schools; we prescribe the subjects of study, and we exact obedience to law regularly. Discipline to be effective can not be optional. Civil liberties embody civil responsibilities, and I believe military service is one. Legal problems, rather technical ones, are doubtless present.

First, you will examine the need for criminal penalties for a failure to register. However, it ought to be possible to create an automatic registration system that would prevent some offenders from becoming criminals. Correlating social security data with income tax filings would, for example, help to identify many of the more competent young people. We could, moreover, require colleges to identify their students, just as we require them now to cooperate with immigration authorities. Ultimately it should be a crime to "knowingly" fail to fulfill an obligation which the person is aware of having. S. 1722 embodies this standard.

Second, it may become necessary to penalise a few who deliberately counsel, and incite resistance. The First Amendment law in this general arena is confused. I don't think there has been much improvement on the formula advanced by Learned Hand; namely whether the gravity of the evil, discounted by its improbability, justifies such invasion of free speech as is necessary to avoid the danger. [Cited an dapproved in *Dennis* v. *U.S.*, United States, 494 (1951 341)].

Third, the question of whether females may constitutionally be exempted from registration is not difficult. In view of several recent decisions upholding classifications and rules operating in the foreign service, and in the military, I predict that the female exemption would be sustained. [See *Vance* v. *Bradley*, 440 U.S. 93 (1979); *Brown* v. *Glines*, 48 L.W. 4095 (Jan. 21, 1980); Secretary of the *Navy* v. *Huff*, 48 L.W. 4122 (Jan. 21, 1980); see also *Parker* v. *Levy*, 417 U.S. 733 (1974); *Schlesinger* v. *Ballard*, 419 U.S. 498 (1975)]. Recent court decisions reveal a hands-off attitude toward acts of Congress in the area of military justice and foreign policy.

Fourth, I remind you that no law is enforced totally, nor can it be. We always will have some law breakers. Law does its job if it supplies deterrents. I believe that if service is required, the vast majority of America's young people will serve, if not happily, then dutifully.

STATEMENT OF JOSEPH W. ELDER

DRAFT REGISTRATION AND SOME OF ITS IMPLICATIONS FOR CIVIL LIBERTIES AND THE ADMINISTRATION OF JUSTICE

My name is Joseph Elder. I am a professor in the Departments of Sociology and South Asian Studies in the University of Wisconsin-Madison, where I have been teaching and doing research for the past nineteen years. During those years I have helped train Peace Corps volunteers for Iran, Afghanistan, and India; I have represented the American Friends (Quakers) Service Committee on peace-seeking missions to India and Pakistan and on civilian relief missions to Vietnam; I currently serve on the Executive Committee of the U.S. National Commission for UNESCO, where I chair the permanent committee on social science; and I currently chair the South Asia Council of the Association for Asian Studies.

I would like to begin by thanking Congressman Bob Kastenmeier and the House Judiciary Subcommittee on Courts, Civil Liberties, and the Administration of Justice for this opportunity for several of us concerned about these issues to present our views on draft registration and some of its implications for civil liberties and the administration of justice.

1. The first point I wish to make concerns the so-called "Carter doctrine," of which the call for renewal of draft registration is a part. I see the "Carter doctrine" as stemming from a selective interpretation of events occurring in Afghanistan and Iran. I wish, as a South Asia specialist, to question that selective interpretation. I wish to question President Carter's judgment, and that of his advisors, in defining the events in Afghanistan as "the greatest threat to peace since the second world war." One can think of other possibly more serious threats such as the Korean war, the Soviet invasions of Hungary and Czechosolovakia, the Cuban missile crisis, and the Vietnam war. I wish to question President Carter's belief, and that of his advisors, that the situation in Afghanistan can measurably improve as a result of a "signal" that the United States is reinstating draft registration. To the contrary, such a "signal" might well stiffen Soviet solidarity and undercut those voices in the Soviet Union calling for Soviet withdrawal from Afghanistan. In the recent past President Carter, and his advisers, have been dramatically wrong in interpreting events in Iran and Afghanistan. Note, for example, President Carter's 1978 New Year's toast to "Iran, [which] because of the great leadership of the shah, is an island of stability in one of the most troubled areas in the world." Note also our government's approval in the fall of 1979 of the deposed shah's visit to the United States—a visit that triggered the sorry train of events at the U.S.

Embassy in Tehran. I am prepared to argue that the President's call for draft registration emanates from the same complex of misinformation and misperceptions as his 1978 toast, his 1979 approval of the shah's visit to the United States, and his 1980 statement that Afghanistan poses the greatest threat to world peace since the second world war. I am prepared to argue that—despite President Carter's impressions—draft registration is no more necessary today in April 1980 than it was in April 1979 or in April 1978.

2. The second point I wish to make concerns my conviction that the reinstatement of draft registration will do little to enhance rapid military mobilization—should such a need arise. A Congressional Budget Office study in November 1978 estimated a 13-day-earlier delivery of recruits to training camps with peacetime registration than with post-emergency registration. A revised Selective Service System estimate reduced the difference to 7 days. In either case, the training camps would require three or four additional months to train recruits for active service, thereby effectively eliminating any meaningful difference between a 13-day or 7-day-earlier delivery of recruits to training camps. On January 16, 1980 Selective Service Director Bernard Rostker's statement was released that the Selective Service System preferred beginning draft registration only after a war or national emergency had been declared. Rostker's statement contributes to my conviction that draft registration as proposed by President Carter would not contribute in any significant way to strengthening our national defenses.

3. The third point I wish to make concerns my conviction that the reinstatement of draft registration (with the strong likelihood of a subsequent draft) will probably generate a number of specific dangers to civil liberties and the administration of justice in the United States.

(a) The danger of the de facto transfer of war-declaring authority from Congress to the President. Article 1, Section 8 of the U.S. Constitution grants Congress the power to declare war. This authority has not been exercised by Congress since World War II. Nevertheless, the U.S. has engaged in two major military engagements (Korea and Vietnam) without Congress formally declaring war. As matters now stand, Congress has only two ways to prevent military adventures by the Executive branch of the government—withholding money and withholding personnel. If Congress reinstates draft registration, it will have relinquished one of its two remaining controls over military adventurism. The Vietnam war demonstrates this danger. In 1963 Congress extended the draft for four years. Two years later President Johnson, using that Congressional blank check, sent thousands of draftees to a small country called Vietnam—in which eventually over 50,000 of them sacrificed their lives.

(b) The danger of enhancing the possibility that the United States might engage in dubious military adventures. Some have argued that an annual influx of drafted civilians into the U.S. armed forces might place a brake on military adventurism. Whatever braking influences such drafted civilians might have had, they were not very effective in preventing the movement of U.S. troops into Korea, Lebanon, the Dominican Republic, and Vietnam. The most effective rein on possible U.S. military adventures is to assert strong civilian control over the military as provided for under the Constitution. In 1973 the draft was replaced by the All-Volunteer Force. It may not be merely a coincidence that since that date the U.S. has not engaged in dubious military adventures, despite possibilities for such adventures in Angola, Ethiopia, and Guatemala.

(c) The danger of criminalizing large sectors of our population if draft registration is reinstated. Citizens throughout the United States, and we in Madison, Wisconsin especially, have expressed our strong reservations about the possible reinstatement of draft registration. I refer to the votes in Madison's Common Council and to the city of Madison's April 1st, 1980 referendum in which 61 percent of those voting replied "no" to the question: "Do you support a national registration and draft for all 19- and 20-year-old men and women?" If, in the face of such citizen opposition, the U.S. government insists on reinstating draft registration, two major sectors of the population are apt to be criminalized: (i) those young men and—if required—women who will not register—many of them on grounds of conscience; (ii) those men and women, many of them not of registration age, who will advise and counsel those who will not register.

Even if we assume a low rate of non-compliance with the registration requirement, say 2 percent of the male population ages 19 and 20, we are speaking about 80,000 new federal law violators. If we assume a 12 percent rate of noncompliance with the registration requirement (which was the actual rate in 1972), we are speaking of nearly half a million new federal law violators. If we assume that women will be required to register and that they will refuse to comply with the registration requirement at the same 1972 rate as the men, we are speaking of nearly one-million new male and female federal law violators. Do the federal courts plan to prosecute all 80,000—or 480,000—or 960,000 cases? Do the federal courts plan to imprison a substantial number of these new law violators? Since the current federal prisons cannot house any major influx of new convicts, should we start a massive new federal prison building program? Should we create further federal judgeships to handle the increased number of court cases? Does the United States government really want to declare a war of litigation against a sizeable sector of its own young citizenry?

(d) The danger of generating a divisive national confrontation over the position of women and draft registration. Under the 5th and 14th Amendments of the Constitution, the state cannot deny to any person "the equal protection of the laws." In view of recent court decisions, it seems likely that a court challenge to a men-only draft registration would probably be successful. This could mean that, within the near future, the courts of the land could require draft registration to include women. Given the complexities of the long-overdue incorporation of women citizens into full participation in American life, is compulsory life in the military the most ratonal next step in providing women with the rights of which so many of them have been systematically deprived for so long?

(e) The danger of introducing the inequities and injustices of all prior military registrations and drafts. Registration is only a prelude to the draft. Characteristically, the burdens of past drafts have fallen most heavily on the young, the poor, and the minorities. General Lewis B. Hershey, for many years head of Selective Service, acknowledged that no draft can be fair. With age, class, and minority relations gradually improving in the U.S. today, do we want to reopen the age, class, and minority wounds of the '60s and '70s?

(f) The danger of overlooking the rights of conscientious objectors. At the moment there is great confusion over what rights of conscientious objectors—if any—will be incorporated into the draft registration legislation. The Senate and the House versions of the bill differ. And the Selective Service System's report on conscientious objectors, prepared in the summer of 1979 by Major Donald A. Gurwitz for Colonel Walter Thompson, recommends that such decisions be made as:

"Complete rescission of the conscientious objector exemption modeled on the World War I statute; and, as an alternative, restriction of the conscientious objector exemption to practicing members of religious sects that specifically prohibit participation in military service, elimination of the requirement that reason be given for the denial of a claim for conscientious objector classification, and a specification that Selective Service determination on claims shall not be subject to review by another agency, official, or court of the United States . . ."

Such recommendations as a conscientious objector shall be subject to loss of liberty without provision of reason, as the Selective Service System shall define itself as exempt from such prior Supreme Court decisions as in the Seeger case and in the Welsh case, and as judicial review shall be abolished for Selective Service determinations appear to be blatantly unconstitutional. But this does not seem to have bothered the Selective Service System. A 1977 study for the Selective Service System recommended that ten regional "stations" be established to house conscientious objectors—"stations" which, in their outline, look suspiciously like internment camps.

If indeed there is to be draft registration, then it behooves those drafting the legislation to study the evolution of the Supreme Court rulings concerning conscientious objection—rulings which have addressed the complexities of determining in today's world what is a satisfactory definition of "religious" and "belief." Otherwise the religious repressions from which some of our forefathers fled the Old World may be transported to the New World. And the United States may again become a nation from which people depart—as they did during the Vietnam War days—in search of religious freedom.

In my presentation I have outlined six specific threats which I feel draft registration poses to civil liberties and the administration of justice in the United States. In conclusion, I would like to return to my earliest point: namely, that as a specialist on South Asia I believe that President Carter and his advisors have responded inappropriately to the events in Afghanistan. I believe that President Carter's call for reinstating draft registration is uncalled for and potentially damaging both to the well-being of our nation and to world peace. And I subscribe to the view that the view that in this situation the greatest protection to civil liberties and the administration of justice in the United States is to oppose the reinstatement of registration for the draft.

Mr. **Kastenmeier**. Your presentations have been brief and to the point and I would like to commend you both.

Professor Baldwin, you indicated that if there were a constitutional challenge mounted by an organization on behalf of women on the point of registration of males only, that the courts would probably sustain the exemption of the present law.

Would the enactment of ERA to the Constitution have any effect?

Professor **Baldwin**. There is legislative history underlying ERA that indicates that the proponents of ERA suspected this would lead to the possibility of drafting women. That is only the view of a few people. The court would have to construe that issue.

It is possible, however, that the court could deal with the issue in terms of the underlying tradition. The Government has never demanded the service of females and the court might conceivably decide that ERA did not intend to reach the issue of compulsory military service.

It seems to me also that a service might impose physical fitness studies that would have a discriminatory impact, but that the Supreme Court would say they were not sex discriminatory.

Mr. **Kastenmeier**. Let me ask you a different question.

I recognize your position is that this country ought to go to military conscription and that registration is not the end of a change of policy which you recommend. And I must say in my discussions with Curtis Tarr, we hypothesized that perhaps 10 percent or some sizable figure would be out of compliance.

Would you not agree with Congressman Carr that if the administration does what it says it is going to do, just invokes registration and not the draft, that in fact registration then becomes a front line of law enforcement. And if we have a high percentage of noncompliance, 10 percent, that the Federal authorities will be compelled to go out and start prosecuting and penalizing these people and as a consequence, we might have a real law enforcement problem? Do you not agree?

Professor **Baldwin**. There is always likely to be a problem when you have a law that is resisted such as prohibition or the resistance to the 55-mile-per-hour speed limit. It seems to me the wise response would be to develop an automatic registration system in which a person would have really very little choice. This of course does create problems, using the Social Security System in a way it hasn't been used before, or using the tax system in a way it hasn't been used before, or perhaps requiring universities, schools, places where young people are present cooperating with Government in ways they presently cooperate with the Immigration Service and so forth.

I advise an automatic registration system that minimizes the risk of resistance.

Mr. **Kastenmeier**. A system where affirmative action on the part of the registrant isn't even required.

Professor **Baldwin**. Not very much.

Mr. **Kastenmeier**. Professor Elder, how would you respond? Does that change your mind? Would you consider it less onerous to have a system where people would not have to come forward affirmatively and register?

Professor **Elder**. It would be less onerous. As for conscientious objectors to registration, an automatic registration system would not require such persons to perform an act which they felt violated their principles.

Mr. **Kastenmeier**. You have raised a question as did the preceding witness, about conscientious objection. Normally the Selective Service authorities don't expect to reach that question at the point of registration but at a later point in the process. They don't consider it a valid question at this point in time.

But nonetheless that doesn't make people who have conscientious objections to do something affirmative with respect to responding to the system, that doesn't keep them from having to face a very great question of compliance or noncompliance with the law.

Professor **Elder**. That's right. The way the previous Selective Service laws dealt with conscientious objectors, they did not recognize conscientious objection to registration as a matter for conviction. That is a misconception on the part of those who drafted the legislation. I know numerous young people who felt it violated their principles to register. They do then become criminalized by a law which gives them no choice.

Mr. **Carr**. Thank you, Mr. Chairman.

Professor Baldwin, I would like to ask you a question about your statement on page 1 where you discuss economic incentives. I don't question your expertise as a law professor. I didn't when I was at school anyway.

Professor **Baldwin**. You have learned since then.

Mr. **Carr**. No; I will do a side step and question your expertise as an economist.

You state:

> We rely on economic incentives which draw most heavily on the poor, the least skilled, the least trainable. . . .

Isn't that really making a statement on the sufficiency of the economic incentives rather than on the All-Volunteer Force?

Professor **Baldwin**. I think it is important to draw on people that we could not afford to buy in the paying system. I look at my own experience. If you'll forgive me, I was drafted having gone through law school and frankly, a private in the Army had an easier life than the third-year law student.

In my company we had five lawyers, several Ph. D.'s and I think we turned out to be good soldiers. Not necessarily happy soldiers but it was better for us and for the United States Army.

It is not possible with a paid system even with fringe benefits to draw the most privileged members of society into the military. I think you have to draft them, drag them off sometimes most reluctantly.

I assure you I could have resisted induction quite vigorously but the alternative of 2 years in jail or taking care of pigs on a farm did not appeal to me. I was from a Quaker college and I could have squeezed out a conscientious objector status but I believe that is undesirable to a Nation. Service to one's Nation where one is needed is a civil duty.

Mr. CARR. In regard to economic incentives as you visualized conscription in your peer world, would you then go back to the system of relatively low pay? The Congress has not lived up to its obligation under the all-volunteer concept and as I indicated in my previous remarks, I think for some benign and devious reasons which coalesce to everybody's difficulty, nonetheless they are better today than they were. Are you asking for a rollback?

Professor BALDWIN. I don't know about rollback. Inflation will take care of a good deal of base salary. With conscription it would not be necessary to make the payments that are presently required. We won't have to go much higher. Some attention could go maybe to fringe benefits by way of transportation costs such as half fare—or less—on buses, airplanes, trains. This was an important fringe benefit. That's a relatively low-cost items.

I don't think the country could afford hiring the competence required at present market rates.

Mr. CARR. Returning to the draft and draft type economics would probably have more sailors leaving San Diego with more families on food stamps and not less.

Professor BALDWIN. We might get to the point where we aren't drafting too many people with families. The present system does not accommodate the young soldier or sailor in the Army who is married. A number of those are not 18- and 19-year-olds but 20- and 21-year olds. If you select the 18- and 19-year-old ranks the percentage of people with families would be reduced.

Mr. CARR. I might point out to you that the status on military pay is that military pay has not kept up with inflation.

Professor BALDWIN. Whose pay has?

Mr. CARR. That's true. The comparability statute doesn't even pretend that is a goal. It is comparability with other similarly situated workers. But they have been capped at 5 percent a year where everyone's income on the average has been going up 8.7 or something. If you were to further depress that—well, it's interesting.

I thank you both for your comments.

Mr. KASTENMEIER. I again wish to thank you both.

Our last scheduled witnesses this morning are Curt Pawlisch and Barbara Lightner, and I would invite them to come forward. I know it is running late.

Curt Pawlisch is a December graduate of the University of Wisconsin with a degree in political science. In the fall, he will go to law school. He is an active member of the Madison Coalition Against Registration and the Draft—MCARD. He organized a Madison teach-in against the draft.

Barbara Lightner is program coordinator of the University's YMCA, active in civic and community affairs.

I welcome you both, and I appreciate your patience.

TESTIMONY OF CURT PAWLISCH, MEMBER, MADISON COALITION AGAINST THE DRAFT, AND BARBARA LIGHTNER, UNIVERSITY OF WISCONSIN YMCA

Mr. PAWLISCH. One question which this committee has attempted to answer and which I intend to address in this testimony is the extent to which young people are willing to risk prison sentences to defy registration and the draft. Only those in Government can answer the counterpart of this question, and that is, to what extent is the Government willing to pay the costs of repressing an antiregistration movement?

It is important to remember, however, that a failure to comply with registration requirements represents only one form of registration resistance, that is, this is passive resistance, a resistance which can be practiced only by prospective registrants. In active resistance, both prospective registrants and other members of the community will seek to prevent others from registering.

This form of resistance will also put a strain on our judicial system. Tactics of active resistance will include pickets, sit-downs and other obstructionist techniques at registration centers. These techniques will be especially burdensome to the Government if the new Criminal Code passes through Congress, a code which, it is my understanding, even outlaws protests at Federal buildings.

The city of Madison has not forgotten those years. And it is important to remember that those who resisted the draft and the Vietnam war have not gone out to pasture in somnolent suburbs. The generation of the 1960's did not melt away. In fact, many of them can lend to the present antiregistration movement their power, their prestige and experience. As parents, they have a keen interest to make sure that their children not suffer through the long and bitter years of another antiwar movement. Or, as former antiwar activist and former mayor of Madison, Paul Soglin, concluded in his statement to a recent teach-in against the draft:

> The generation of the sixties will march arm and arm with the generation of the eighties. Hell, no. We'll all make sure that you won't go.

Indeed, the generation of the 1980's has not waited to be led by the hand by our elders. Only 2 weeks after President Carter's state of the Union message, two teach-ins against the draft took place in Madison on Saturday, February 9.

On February 16, more then 1,000 people marched down Madison's State Street to protest registration. Three student groups against the draft formed in less than 1 week after the state of the Union message. These groups have since united and formed MCARD, the Madison Coalition Against Registration and the Draft.

In February, five Madison State legislators introduced a resolution into the State assembly, calling registration "unnecessary and undesirable at this time." The Madison Common Council passed a resolution condemning President Carter's proposed registration plan. The generation of the 1980's was active behind both pieces of legislation.

The Madison Common Council placed on the April 1 ballot a referendum question which asked: "Do you support the registration and draft of 19- and 20-year-old young men and women?" Over 60 percent of Madison voters responded "no" to this question.

On March 22, more than 50 students traveled to Washington, D.C., to take part in the national march against registration. This event was attended by 30,000 people.

It may seem incredible to some policymakers in Washington that thousands of people across the country are willing to give so much time and money to a cause that seeks only to prevent the implementation of a plan whereby 19- and 20-year-old males will sign a little white card and give it to their friendly postman. Incidentally, if that was all there was to registration, the filling out of a little white card, then the penalties for noncompliance are absurdly heavy.

By these heavy penalties, our Government is tacitly admitting that registration is an important issue. Those who have been opposed to registration have known this all along. With or without penalties, we see registration as only the beginning, only the opening of Pandora's box, toward a draft and war.

We in the antiregistration movement do not wear ideological blinders like the many single-issue groups of the day. We are well aware that those who fight registration, those who fight for a better environment, those who fight nuclear power, and those who fight for progressive change in our society, are united at least on one very fundamental level: we fight the same enemy.

Because registration and the draft involve a life-and-death matter, the antiregistration movement may provide the galvanizing spark for the formation of a new unity among the many progressive forces in our society.

It is indeed ironic that President Carter's call for registration, a move to strengthen and revitalize the current socioeconomic order by piecemealing us closer to a war of aggression, may well spark a broad movement which will seek to reform and change that order.

Thus, the antiregistration movement threatens to be a broad-based movement. Moreover, it threatens to be an intense movement, a movement to prevent this country from entering another aggressive war of futile self-destruction in the name of profits for defense industries.

Another Vietnam would only fuel inflation. Another Vietnam would completely shatter our Government's legitimacy to the American people. We will not stand by and see this country so ruined. At stake now is the country itself.

Can we believe that registration will lead to anything but another war? Can we believe that when we know that there has never been a national registration for a draft without a war? Can we believe that registration is a symbol of our "defensive readiness" to make a stand against the Russians when the cloak of "defense" has been used again and again by this Government to disguise the dagger of foreign interventionist desires which have been so often motivated by the need for raw materials and secure markets as in the Bay of Pigs operation, the war in Vietnam, and the overthrow of President Allende of Chile?

Should we acquiesce and nod our heads in dumfounded compliance to our Nation's leaders who might involve the world in nuclear war?

Should we trust our Government when we were the first and only country to use the atomic bomb? Can we divorce the issue of registration from the grander plans of remilitarization which are presently being realized in the field of nuclear weaponry?

Should we be silent when we see that President Carter's decision to deploy the cruise missile in Europe will vastly destabilize the balance of terror between the two superpowers because it is a first-strike weapon which can penetrate enemy radar systems? Can we quietly stand by while President Carter and the Defense Department attempt to sell the MX missile as a defensive weapon needed to escape and frustrate the incoming volleys of Soviet missiles, when we know that the MX missile, because of its accuracy, is a first-strike weapon?

And when President Carter declares that he is creating a mobile strike force, a "blitzkrieg" armada of 100,000 men, would we not be neglecting our duty as citizens of the world to point out that this force is good for one thing and one thing only, intervention? Presumably, such a force would be used to "defend" our interests, oil fields, in the Middle East. This is, of course, aggression because the oil fiels are not our own. Should we do nothing to stop registration when our tanks are being repainted from olive green to desert brown and our troops are training on sandy beaches?

Should we trust a President who has manipulated the foreign policy crises of his own making to his own political advantage? Indeed, the manner in which President Carter has manipulated the crisis in Iran is shameful. Not only does such a crisis distract us from our current "malaise" of 20 pecent inflation, 20 percent interest rates, rising unemployment and the current recession, it martials the Nation into a war unity which instinctively supports the President.

Our loss in Vietnam shattered our world empire. The dollar was sent reeling. Inflation has been our No. 1 problem since Vietnam, an inflation which was caused by deficit spending to fund the war as well as defense spending's inherent inflationary tendencies: it generates goods which cannot be recycled into the economy.

As President Carter strengthens our military and plans to register young people for the draft, one thing becomes clear: he is intending to solve this Nation's economic woes by resorting to military force to reshape a world order more suitable to the needs and demands of our present socioeconomic system. In many ways it boils down to this:

Rather than step on corporate toes at home and change this country's system of energy consumption and production to alternative sources of power, President Carter has decided to listen to his friends on the Trilateral Commission, corporate interests most resistant to social change, and he has begun to prepare us for the sacrifice of blood for oil.

Rather than insist that our allies strengthen their defenses on a massive basis, we will continue to be the sole defender of the West so that we will be the predominant power in the West that shapes a world order best suited for ourselves. It is the World War II success formula. And it will lead to tragedy.

In a recent article in the Washington Post, William Greider has suggested that:

> The most powerful political idea of our time, surely, is the idea of World War II. For here we are, nearly 40 years later, and the World War II experience

is still controlling American policy, still defining "national security" in a false and dangerous manner, raising brave banners and launching the wrong ships.

He fears that if the United States falls back upon its World War II reflexes, especially toward the Middle East, only disaster can ensue because of the many factors which differentiate the Persian Gulf of 1980 from the Western Europe of 1938: our ignorance of Islamic traditions, the lack of clear allies for the United States to protect, our sad history of supporting military dictatorships, and the threat of nuclear war.

The fact is that inherent in the World War II success formula is tragedy. Greider goes on to quote Arthur Schlesinger, who wrote of the post-World War II policies of the United States:

> That fate was to have everything we hoped for, struggled for, yearned for—come about, and come true. And then to see those visions warped, distorted, and made grotesque in their execution.

Such was Vietnam. Says Greider:

> The Greeks would understand the outlines of tragedy in this. Does a great nation, like a tragic hero, fall victim to its own triumphant nature, an overweening pride that blinds it to realities? Could that happen to us?

As so we in the anti-registration movement are motivated by something far beyond selfish desires to avoid duty to our country. It is precisely because we feel a duty to our country that we will not allow ourselves to be used as cannon fodder for a new trilateral order, that we will not allow ourselves to be used as a solution to the economic crises of the day.

We will not allow America to be "warped, distorted, and made grotesque" by another Vietnam. We will sacrifice the oil of the Middle East to preserve the blood of America.

The young people of this Nation will not allow this country to be strapped and chained upon the wheel of tragedy. Indeed, many young people will brave the threat of prison rather than see this country face the fate of King Lear when he called out: "I am bound upon a wheel of fire which mine own tears do scold like molten lead.

This country is too young to die.

Mr. KASTENMEIER. Thank you for that very strong statement. Ms. Lightner, you may proceed.

Ms. LIGHTNER. Thank you, Congressman Kastenmeier and Congressman Carr.

Before I begin the formal part of my testimony, with regard to Alderman Larry Olson's comments I would like to recognize we are from Madison but should not therefore be disregarded. It might be pointed out we have from time to time in the past been a sign of things to come in the future. So the referendum and the levels of resistance that exist here should not be dismissed just because they are from Madison.

I am speaking for the University of Wisconsin YMCA which has three basic concerns regarding military registration and related matters. We are concerned, first, that civil liberties be preserved in times of heightened response to world events; and, second, that criminal penalties fit the crime by accurately reflecting the need to deter certain activities.

Third, and perhaps most important, we are concerned over the present lack of clarity surrounding military registration and related matters. We, therefore, urge the subcommittee to consider legislation that is more specific than it is general in the areas of civil liberties and criminal law; and not leave the specifics to be filled in through the rulemaking authority of individual agencies, or through court decision—neither of which are as accountable to the people as is the Congress.

In matters so close as this to the warmaking power of the Congress, we would hope that specifics will be dealt with in the congressional forum, and elevated to the public domain where they might receive the widespread attention they deserve. In view of the selective service report released by Senator Mark Hatfield it would seem that we have the time to carefully consider such matters—before a hypothetical future point of inducation when the sense of crisis may become so heightened that careful thinking will be difficult, if not impossible.

First, then, with regard to civil liberties we recommend specific legislation. I might add with regard to this that our recommendation could be taken in the spirit of the congressional taxing powers. You get involved in the rules and regulations and details of taxation. We think that would be appropriate in this instance.

In order to protect to the greatest extent possible the privacy and other constitutional rights of eligible registrants, we urge the subcommittee to:

(1) Establish a firm and clear standard of need which must be shown not to have been met before the Government may require personal information for purposes of military registration; with the need to be reflected in terms of selective service ability to move to the mobilization required by circumstances;

(2) Establish a firm and clear standard of need which must be shown not to have been met before records other than selective service records can be used for purposes of registration in the first instance; as well as for purposes of locating those who do not comply with orders to register; with the need to be determined according to the actual number of persons required, and the actual number of persons in compliance, rather than an estimated, or even actual, number of persons not in compliance;

(3) Determine the harm that might result from use of various records other than those of the Selective Service—that is, fear that records might be used for military registration led a number of people in Madison, Wis., not to vote, as well as not return census forms;

Congressman Olson mentioned a low vote on the referendum. I was involved in a "get out the vote" campaign, to vote no. I received a number of answers that said I would not register to vote because they may use voter registration as a means of register for the executive service system.

(4) Determine which records might, in a situation as determined under 2 above, be used with least harm; require that persons whose names are to be entered into such records be notified of their possible use for military registration; and prohibit, by name, use of those records determined to have significant harmful consequences;

(5) Amend the Privacy Act to create a specific exception for time of war or national emergency under which points 1–4 above are precisely carried out;

(6) Specifically prohibit the gathering together of conscientious objectors into camps, stations, barracks, living or working quarters, for any reason whatsoever;

(7) Provide for administrative and judicial review of decision denying conscientious objector status; and require that reasons be given for any and all denials.

Further points have been dealt with and I will only mention a couple, that the committee enact legislation specifically limiting "time of war" to those situations in which Congress has formally declared war; and enact further legislation making it clear that the state of national emergency declared in 1950 does not continue in effect today; the Senate report makes clear that arguably the 1950 state of emergency is in effect today—and insure congressional participation in declaring a state of national emergency through specific and concrete statement that such will be the case. In this case where there may not be a commitment of trust, a state of national emergency should have applied to it the collective judgment of the Congress and Senate.

And third, an item of particular interest to us in Madison coming off the Vietnam years, reaffirm the constitutional right of those accused to face their accusor by prohibiting all criminal charges brought in the name of unnamed witnesses, even wehn the good character of the arresting officer is sworn to by a superior or other officer.

I'm not sure if that is clear. They say such-and-such an activity occurred. An unnamed witness swore to this. The character of the officer bringing the complain is good, honest, sincere and we have never known him not to tell the truth.

With regard to the criminal code, only a couple of points.

We do support the grading of criminal offenses as they are seen in the proposed Senate and House criminal recodification. We ask that failure to register be taken off the list of four criminalized activities. In this particular situation it is not as it is said to be in the Senate report one of the ultimate offenses, particularly since we have been told over and over again that registration means only registration and not a draft. That it be taken out and that noncompliance be decriminalized where there is no ongoing induction.

This would have to be an act of the Congress and could not come through the courts or the Selective Service System. In addition to the grades now existing we would like a consideration of a grade according to need with need to be determined according to the number of persons actually required and the actual number of persons who are in compliance rather than an estimated number of persons not in compliance.

Thank you.

Mr. **Kastenmeier.** We will take both of your statements in their entirety, and make them part of the record.

[The statements follow:]

Statement of Curt F. Pawlisch, Member of the Madison Coalition Against Registration and the Draft

The Reverend Jesse Jackson wrote in a recent column that, "When the country is faced with economic crisis and does not know what to do with the unemployed young people, it often opts to send them off to war or imprison them. The recent efforts to register our young people for the draft, and these prison statistics, make one wonder." [1]

The statistics which Jackson cites include estimates that over 1,000 new prisons will be completed in the next five years, "adding another 300,000 prisoners to our caged population." [2] Jackson concludes that the young people of this nation may be "comforted" by the knowledge that the future will provide them a healthy supply of prisons and a strong demand for the draft.

To go to prison or to be drafted—this is the question which many young people may soon face. One question which this committee is attempting to answer, and which I intend to address in this testimony, is the extent to which young people are willing to risk prison sentences to fight registration and the draft. Only those in government can answer the counterpart of this question, and that is, to what extent is the government willing to pay the costs of repressing an anti-registration movement.

Indeed, the stakes are high for both resistors and repressors. The maximum penalty which a 19- or 20-year-old male could face if he chose not to register is a $10,000 fine and five years in prison. On the other hand, the government is faced with a large potential "penalty" as well. If only 10 percent of this nation's 19- and 20-year-old males fail to register, this would mean that an estimated 350,000 young people could face a maximum penalty of five years in prison. It is estimated that the annual cost of housing a federal offender in a newly constructed prison is $17,305 per year.[3] Thus, assuming U.S. Attorneys can handle the workload of convicting this massive number—which they can't—to house 350,000 young people for five years could cost the Federal government 28 billion dollars. And, if new prisons would have to be built, even to house only half of these 350,00 people, the costs of this repression would become astronomical when we consider that building each new federal prison cell costs, on the average, $40,000 to $50,000.[4]

It is important to remember, however, that a failure to comply with registration requirements represents only one form of registration resistance, i.e., this is passive resistance, a resistance which can be practiced only by prospective registrants. In active resistance, both prospective registrants and other members of the community will seek to prevent others from registering. This form of resistance will also put a strain on our judicial system. Tactics of active resistance will include pickets, sit-downs and other obstructionist techniques at registration centers. These techniques will be especially burdensome to the government if the new Criminal Code passes through Congress, a code which, it is my understanding, even outlaws protests at federal buildings.

Should President Carter go ahead with his plan to implement registration at local Post Offices, the tactics of active resistance may include overburdening these Post Offices with large increases in postal volume, e.g., one tactic which has been discussed revolves around the idea of sending many large empty packages to the Selective Service System. Local businesses might be severely effected by such a slow-down. The Postal Service may be forced to hire more employees. Local police enforcement agencies will be faced with the task of overseeing the many marches, pickets and sit-downs which could occur at these registration centers. It might then only be a matter of time before local police, tired and frustrated, begin to employ violent means to end even the most pacific of anti-registration pickets.

Should President Carter decide to implement some form of passive registration (e.g., the use of Social Security numbers to implement registration), tactics of resistance will include court challenges to the constitutionality of such passive registration. Moreover, the threat of passive registration is not without its subtle costs. Assurances to the contrary, many young people will not fill out their census forms because they fear that this census data may be used—at some point—to register them for a draft.

Court challenges to an all male registration are certain to occur simply on the basis that the Selective Service Law, as it now stands, discriminates against females.

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[1] The Reverend Jesse Jackson, the Wisconsin State Journal, April 7, 1980.
[2] Ibid. Jackson quotes S. Bryan Wilson, "a prison-reform advocate."
[3] Ibid.
[4] Ibid.

Thus registration, that symbol of national purpose and resolve, could well cost federal, state, and local governments billions of dollars to implement.

We who have been leading the anti-registration movement in Madison are confident that the levels of resistance to registration will easily reach 10 percent noncompliance with registration requirements and that this protest will be spearheaded by high levels of active resistance.

Madison has a long and proud tradition of war and draft resistance. Indeed, a recent source of municipal pride has been the film documentary, "The War At Home" which has been nominated for an Oscar. The film covers the ten years of protest against the war in Vietnam, starting from the first anti-Vietnam rally held in the nation—which took place on the steps of the University of Wisconsin-Madison's Memorial Union—past the bombing of the Army Math Research Center at UW's Sterling Hall (which not to our pride, but our deep sorrow, caused the death of one man), to the final peace agreement which ended U.S. involvement in Vietnam.

The city of Madison has not forgotten those years. And it is important to remember that those who resisted the draft and the Vietnam War have not gone out to pasture in somnolent suburbs. The generation of the 60's did not melt away. In fact, many of them can lend to the present anti-registration movement their power, their prestige and experience. As parents, they have a keen interest to make sure that their children not suffer through the long and bitter years of another anti-war movement. Or, as former anti-war activist and former mayor of Madison, Paul Soglin concluded in his statement to a recent teach-in against the draft, "The generation of the 60's will march arm and arm with the generation of the 80's. Hell no. We'll all make sure that you won't go."

It would seem as if President Carter has failed to take note that resistance to registration will occur on a community-wide, and not merely a campus-wide, basis. Although the present appropriation for registration is now stalled in the House Appropriations Committee, we in the anti-registration movement are certain that the Administration will push hard for funding in early May—at a time when students are taking their final exams. We are also certain that the Administration would prefer implementing registration this summer—at a time when students are away from their campuses. If this is true, it shows a remarkable naiveté on the part of this Administration.

Nor will resistance to registration occur only from college campuses. Already, high school antiregistration groups have formed. At one high school alone, there are over 40 students who belong to Students Against the Draft, a group that has organized at Madison's West High School.

Indeed, the generation of the 80's has not waited to be led by the hand by our elders. Only two weeks after President Carter's State of the Union message, two teach-ins against the draft took place in Madison on Saturday, February 9. On February 16, more than 1000 people marched down Madison's State Street to protest registration. Three student groups against the draft formed in less than one week after the State of the Union message. (These groups have since united and formed MCARD, the Madison Coalition Against Registration and the Draft).

In February, five Madison State Legislators introduced a resolution into the State Assembly, calling registration "unnecessary and undesirable at this time." The Madison Common Council passed a resolution condemning President Carter's proposed registration plan. The generation of the 80's was active behind both pieces of legislation.

The Madison Common Council placed on the April 1 ballot a referendum question which asked: "Do you support the registration and draft of 19 and 20 year old young men and women?" Over 60 percent of Madison voters responded "NO" to the question.

On March 22, more than 50 students travelled to Washington D.C. to take part in the national march against registration. This event was attended by 30,000 people.

It may seem incredible to some policymakers in Washington that thousands of people across the country are willing to give so much time and money to a cause that seeks only to prevent the implementation of a plan whereby 19 and 20 year old males will sign a little white card and give it to their friendly postman. Incidentally, if that was all there was to registration—the filling out of a little white card—then the penalties for noncompliance are absurdly heavy. By these heavy penalties, our government is tacitly admitting that registration is an important issue. Those who have been opposed to registration have known this all along. With or without penalties, we see registration as only the beginning, only the opening of Pandora's box, towards a draft and war.

Further, the issue of the draft touches upon one of the deepest philosophical questions in Western philosophy: the individual's obligation to the State. Indeed, the State can demand no greater sacrifice on the part of its citizens than the potential sacrifice of their lives. President Carter's call for registration has brought this question to the front of our thinking. Should the State be obeyed under all circumstances? Are there circumstances in which the State should be disobeyed?

International Law recognizes the need for a citizen to disobey his or her government in many instances. The Principles of Nuremberg state that it is a duty of a citizen to disobey the criminal acts and orders of his or her government. Principle II states that:

"The fact that an internal law does not impose a penalty for an act which constitutes a crime under international law does not relieve the person who committed the act from the responsibility under international law."[5]

The fact that individuals are responsible for the criminal acts of their nation is reinforced under Principle IV:

"The fact that a person acted pursuant to an order of his Government or of a superior does not relieve him from responsibility under international law, provided a moral choice was in fact possible for him."[6]

Crime of international law include under Principle VI crimes against peace:

"(1) Planning, preparation, initiation, or waging of a war of aggression or a war in violation of international treaties, agreements or assurances; . . ."[7]

Thus, it is an internationally recognized responsibility of every citizen to disobey his or her government—not only when the State commands that he or she commit criminal acts of war—but it is the duty of the citizen to hinder his or her government's planning and preparation for an aggressive war.

All indications point directly to the fact that our policy-makers in Washington are planning a war of aggression. Despite President Carter's reassurances, we are certain—and let me repeat it—that registration is only the first step towards a draft and a new war. There is an old German saying, "Give the devil your finger and he'll take the entire arm." We will not give Carter the dirt under our fingernail.

To fight registration is to fight the causes which have brought it about: to see the matter in any other light is to condemn oneself to shadow boxing at an enemy in the dark. The indications which point to the fact that our government is planning a war of aggression are in many ways the very causes of the need for registration and the draft. Such indications include this nation's post WWII history, the present statements and actions of our national leaders, the level of our nation's defense spending, the current instability of the Third World, and—ultimately—our current economic crisis, a crisis that cuts to the heart of our socio-economic order.

It is always the same. Those who wish to change some facet of the present order—whether it be environmental issues, anti-nuke issues, alternative sources of power, women's liberation, gay liberation, civil rights, or draft registration—must come up against those who have the greatest stake in that order, those who will be most resistant to change—at any price, they will seek to maintain that order.

We in the anti-registration movement do not wear ideological blinders like the many single-issue groups of the day. We are well aware that those who fight registration, those who fight for a better environment, those who fight nuclear power and those who fight for progressive change in our society, are united at least on one very fundamental level: we fight the same enemy. Because registration and the draft involve a life and death matter, the anti-registration movement may provide the galvanizing spark for the formation of a new unity among the many progressive forces in our society. It is indeed ironic that President Carter's call for registration—a move to strengthen and revitalize the current socio-economic order by piece-mealing us closer to a war of aggression—may well spark a broad movement which will seek to reform and change that order.

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[5] Cited in War Crimes and the American Conscience," Erwin Knoll and Judith Mies McFadden, editors (Holt, Rinehart and Winston, New York, 1970) pp. 182–183.

[6] Ibid.

[7] Ibid.

Thus, the anti-registration movement threatens to be a broad-based movement. Moreover, it threatens to be an intense movement, a movement to prevent this country from entering another aggressive war of futile self-destruction in the name of profits for defense industries. Another Vietnam would only fuel inflation. Another Vietnam would completely shatter our government's legitimacy to the American people. We will not stand by and see this country so ruined. At stake now is the country itself.

Can we believe that registration will lead to anything but another war? Can we believe that when we know that there has never been a national registration for a draft without a war? Can we believe that registration is a symbol of our "defensive readiness" to make a stand against the Russians when the cloak of "defense" has been used again and again by this government to disguise the dagger of foreign interventionist desires which have been so often motivated by the need for raw materials and secure markets as in the Bay of Pigs Operation, the war in Vietnam, and the overthrow of President Allende of Chile?

Should we acquiesce and nod our heads in dumbfounded compliance to our nation's leaders who might involve the world in nuclear war? Should we trust our government when we were the first and only country to use the atomic bomb? Can we divorce the issue of registration from the grander plans of remilitarization which are presently being realized in the field of nuclear weaponry? Should we be silent when we see that President Carter's decision to deploy the cruise missile in Europe will vastly destabilize the balance of terror between the two superpowers because it is a first-strike weapon which can penetrate enemy radar systems? Can we quietly stand by while President Carter and the Defense Department attempt to sell the M–X missile as a defensive weapon needed to escape and frustrate the incoming volleys of Soviet missiles, when we know that the M–X missile, because of its accuracy, is a first-strike weapon? And when President Carter declares that he is creating a mobile strike force, a Blitzkrieg armada of 100,000 men, would we not be neglecting our duty as citizens of the world to point out that this force is good for one thing and one thing only—intervention? Presumably, such a force would be used to "defend" our interests (oil fields) in the Middle East. This is, of course, aggression because the oil fields are not our own. Should we do nothing to stop registration when our tanks are being repainted from olive green to desert brown and our troops are training on sandy beaches?

Should we trust a President who has manipulated the foreign policy crises of his own making to his own political advantage? Indeed, the manner in which President Carter has manipulated the crisis in Iran is shameful. Not only does such a crisis distract us from our current "malaise" of 20 percent inflation, 20 percent interest rates, rising unemployment and the current recession, it marshals the nation into a war unity which instinctively supports the President.

But deeper questions need to be posed, questions which go far beyond the cosmetics of charismatic politics and right to the heart of the matter: should we allow President Carter to use the resources of this nation to shape the world to a new Trilateral order, an order in which the United States is sure to be predominant over our West European and Japanese partners because of our overwhelming military superiority? Should the United States be placed in the position of sole invading forces. This country's dependence on Mideastern oil is far less than that this nation will go to war if the oil fields of the Middle East are attacked by invading forces. This country's dependence on Mideastern oil is far less than that of Japan's or Europe's and yet they have not made similar proclamations. By insisting that we shall defend this region, President Carter is displaying his willingness to make the United States the predominant power among his Trilateral partners.

The use of force to shape a world order to our designs is nothing new for us. World War II was a smashing success for this formula. By entering the war, we solved our unemployment problems at home and became the predominant power on the globe. For over 25 years, the U.S. dollar was the international standard of currency. While "defending" countries from communism or populist leaders such as Mossedegh of post WWII Iran, we shaped the world markets to our needs. In Iran, our CIA helped to overthrow Mossedegh and install the Shah who became a wonderful client, feeding us raw materials (oil), and giving us an outlet for our goods (arms). The combination of garrison state politics and an interventionist foreign policy created a reflex action which sent us into Vietnam.

Our loss in Vietnam shattered our world empire. The dollar was sent reeling. Inflation has been our number one problem since Vietnam, an inflation which was caused by deficit spending to fund the war as well as defense spending's inherent inflationary tendencies; it generates goods which cannot be recycled into the economy.

As President Carter strengthens our military and plans to register young people for the draft, one thing becomes clear: he is intending to solve this nation's economic woes by resorting to military force to reshape a world order more suitable to the needs and demands of our present socio-economic system. In many ways, it boils down to this: rather than step on corporate toes at home and change this country's system of energy consumption and production to alternative sources of power, President Carter has decided to listen to his friends on the Trilateral Commission—corporate interests most resistant to social change—and he has begun to prepare us for the sacrifice of blood for oil. Rather than insist that our allies strengthen their defenses on a massive basis, we will continue to be the sole defender of the West so that we will be the predominant power in the West that shapes a world order best suited for ourselves. It is the WWII success formula. And it will lead to tragedy.

In a recent article in the Washington Post, William Greider has suggested that, "The most powerful political idea of our time, surely, is the idea of WWII. For here we are, nearly 40 years later, and the World War II experience is still controlling American policy, still defining 'national security' in a false and dangerous manner, raising brave banners and launching the wrong ships."[8] He fears that if the United States falls back upon its WWII reflexes, especially towards the Middle East, only disaster can ensue because of the many factors which differentiate the Persian Gulf of 1980 from the Western Europe of 1938: our ignorance of Islamic traditions, the lack of clear allies for the U.S. to protect, our sad history of supporting military dictatorships and the threat of nuclear war.

The fact is that inherent in the WWII success formula is tragedy. Greider goes on to quote Arthur Schlesinger who wrote of the post-WWII policies of the United States:

"That fate was to have everything we hoped for, struggled for, yearned for—come about, and come true. And then to see those visions warped, distorted, and made grotesque in their execution."[9]

Such was Vietnam. Says Greider: "The Greeks would understand the outlines of tragedy in this. Does a great nation, like a tragic hero, fall victim to its own triumphant nature, an overwhelming pride that blinds it to realities? Could that happen to us?"[10]

And so, we in the anti-registration movement are motivated by something far beyond selfish desires to avoid duty to our country. It is precisely because we feel a duty to our country that we will not allow ourselves to be used as cannon fodder for a new Trilateral Order, that we will not allow ourselves to be used as a solution to the economic crises of the day. We will not allow America to be "warped, distorted, and made grotesque" by another Vietnam. We will sacrifice the oil of the Middle East to preserve the blood of America.

The young people of this nation will not allow this country to be strapped and chained upon the wheel of tragedy. Indeed, many young people will brave the threat of prison rather than see this country face the fate of King Lear when he called out: "I am bound upon a wheel of fire which mine own tears do scold like molten lead."

This country is too young to die.

Statement of Young Men's Christian Association, University of Wisconsin, Presented by Barbara Lightner

The University of Wisconsin YMCA has three basic concerns regarding military registration and related matters. We are concerned, first, that civil liberties be preserved in times of hightened response to world events; and, second, that criminal penalties fit the crime by accurately reflecting the need to deter certain activities. Third, and perhaps most important, we are concerned over the present lack of clarity surrounding military registration and related matters. We, therefore, urge the Subcommittee to consider legislation that is more specific than it is general in the areas of civil liberties and criminal law; and not leave the specifics to be filled in through the rule-making authority of individual agencies, or through court decision—neither of which are as accountable to the people as is the Congress.

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[8] William Greider, the Washington Post, March 23. 1980.

[9] *Ibid.*

[10] *Ibid.*

In matters so close as this to the war-making powers of the Congress, we would hope that specifics will be dealt with in the Congressional forums, and elevated to the public domain where they might receive the widespread attention they deserve. In view of the Selective Service report released by Senator Mark Hatfield stating that registration prior to mobilization is not necessary, it would seem that we have the time to carefully consider such matters—before a hypothetical future point of induction when the sense of crisis may become so hightened that careful thinking will be difficult, if not impossible.

First, then, with regard to civil liberties. In order to protect to the greatest extent possible the privacy and other constitutional rights of eligible registrants, we urge the Subcommittee to:

(1) Establish a firm and clear standard of need which must be shown not to have been met before the government may require personal information for purposes of military registration; with the need to be reflected in terms of Selective Service ability to move to the mobilization required by circumstances;

(2) Establish a firm and clear standard of need which must be shown not to have been met before records others than Selective Service records can be used for purposes of registration in the first instance; as well as for purposes of locating those who do not comply with orders to register; with the need to be determined according to the actual number of persons required, and the actual number of persons in compliance, rather than an estimated (or even actual) number of persons not in compliance;

(3) Determine the harm that might result from use of various records other than those of the Selective Service—e.g., fear that records might be used for military registration led a number of people in Madison, Wisconsin not to vote, as well as not return census forms;

(4) Determine which records might, in a situation as determined under No. 2 above, be used with least harm; require that persons whose names are to be entered into such records be notified of their possible use for military registration; and prohibit, by name, use of those records determined to have significant harmful consequences;

(5) Amend the Privacy Act to create a specific exception for time of war or national emergency under which points 1–4 above are precisely carried out;

(6) Specifically prohibit the gathering together of conscientious objectors into camps, stations, barracks, living or working quarters, for any reason whatsoever;

(7) Provide for administrative and judicial review of decision denying conscientious objector status; and require that reasons be given for any and all denials.

In order to protect the first amendment and other constitutional rights of all persons, we urge the Subcommittee to:

(1) Remove all criminal penalties for what would otherwise be an exercise of constitutionally guaranteed rights; e.g., by repealing sections of the present criminal code relating to "counseling" persons; and by not enacting sections of the proposed criminal code making it criminal to "incite" another to an act of non-compliance, as well as not enacting any sections curtailing the right of the people peaceably to assemble;

(2) Enact legislation specifically limiting "time of war" to those situations in which Congress has formally declared war; and enact further legislation making it clear that the state of national emergency declared in 1950 does not continue in effect today; and ensure Congressional participation in declaring a state of national emergency through specific and cencrete statement that such will be the case;

(3) Reaffirm the constitutional right of those accused to face their accusor by prohibiting all criminal charges brought in the name of "unnamed witnesses." even when the good character of the arresting officer is sworn to by a superior or other officer.

With regard to the criminal code: In order that criminal penalties reflect an appropriate and meaningful standard of justice, we urge the Subcommittee to:

(1) Repeal the present criminal code which establishes only one penalty for non-compliance without regard to time of war or national emergency, and enact a penalty system according to whether the nation is at peace, or at war or in a state of national emergency.

(2) In addition to the above, create a distinction in penalties (with relevance to prosecutorial seal) according to need, with need to be determined according to the number of persons actually required and the actual number of persons who are in compliance, rather than an estimated number of persons not in compliance;

(3) Create a distinct section for "failure to register," and decriminalize non-compliance when there is no ongoing induction;

(4) Establish a conscientious objector defense for non-compliance; enact criteria for what shall be accepted as a conscientious objector defense to include at least religious, moral, ethical or political belief, and objection to one war in particular or all wars in general;

(5) Do not criminalize failure to report for alternate service, which would be in violation of the constitutional prohibition against involuntary servitude and might also perhaps reflect a desire for retribution inappropriate to a criminal code.

Mr. Kastenmeier. You both have offered us a laundry list of specifics as to what we might do to restrain the implementation of registration and to limit its effectiveness. You specifically point out areas where problems will occur. I take it that this derives from a feeling that the President's request is not necessarily well thought-out and it comes from the use of registration as a symbol-like gesture and that we would be better served if we went into the question and all of its ramifications more deliberately and thoughtfully and in response to a commonly perceived need for national security danger which under the present circumstances is lacking.

Do you not agree?

Mr. Pawlisch. Yes, I would agree that you are right.

I would like to just add one more thing to my testimony. That is a statement by the Midwest Coalition Against Registration and the Draft. I have been asked to give that to you.

Mr. Kastenmeier. Without objection that statement will be included.

[Committee insert follows:]

Midwest Coalition Against Registration and the Draft,
Chicago, Ill., April 7, 1980.

Hon. Robert W. Kastenmeier,
House Judiciary Committee, Subcommittee on Courts, Civil Liberties, and Administration of Justice, U.S. Congress, Washington, D.C.

Dear Representative Kastenmeier: The Midwest Coalition Against Registration and the Draft is a coalition of approximately twenty-five (25) anti-draft groups in an eight state region, including Illinois, Kentucky, Missouri, Indiana, Iowa, Michigan, Ohio, and Wisconsin. Our function is to coordinate antidraft activity throughout the Midwest, to do outreach in order to facilitate involvement with the antidraft movement, and to participate in national activity. We are unified around four points: No Registration; No Draft; No Compulsory National Service; and No Military Intervention. Within this framework we would like to address ourselves to the House Judiciary Subcommittee on Courts, Civil Liberties, and Administration of Justice around the issue of the effect on the judicial system of reinstating registration.

The Selective Service Document which was recently released predicted greater than fifty (50) percent of those eligible for registration would apply for Conscientious Objector status if such legislature was passed. Our own experience indicates that many persons are concerned about reinstating registration for moral, religious, and philosophical reasons. Young people are not going to blindly oppose their personal convictions and will be willing to explore every possible avenue for avoiding registration.

We urge the Subcommittee to oppose registration. In the event that registration is passed, people should be allowed exemptions rather than being punished for their beliefs. The Vietnam War is still fresh in peoples' minds, and we learned a bitter lesson from that experience. Many people now believe that the Vietnam War resisters were correct in what they did, which will encourage many more young people today to resist a new draft.

During the Vietnam War era, approximately 200,000 men per year failed to register. As you know, there were 100,000 who came into conflict with the law, according to testimony presented to your Subcommittee in 1974 on the issue of amnesty. Can our judicial system afford to process at least these same numbers today?

Please keep these points in mind as you return to Washington.

Midwest Coalition Against Registration and the Draft (MidCARD) (Ann Arbor CARD, Antioch Anti-Draft Coalition, Bloomington Against the Draft, Champaign-Urbana Stop the Draft Committee, Chicago CARD, Columbus Anti-Draft Coalition, Draft Information Group, Detroit CARD, Earlham Students Against the Draft, Johnson County CARD, Kent CARD, Kansas City Committee Against the Draft, Lexington CARD, Loyola University CARD, Madison CARD, Michigan CARD, Midland TRI-CARD, Milwaukee CARD, Northwestern University CARD, Oberlin Against the Draft, Student Coalition Against the Draft Kalamazoo, SCARD-University of Iowa, Southern Illinois University-Carbondale CARD, University of Chicago CARD, University of Illinois-Circle CARD, Washtenaw County CARD, and Richmond, Indiana CARD.)

Mr. Carr. I have no questions.

Mr Kastenmeier. Thank you both for your testimony.

The Chair will say this concludes those witnesses who were scheduled to appear. I do know that Tom Rachell and George Koski have written statements they will submit for the record.

Dennis Crow and Lloyd Swanson, in the event you want to submit statements for the record, the record will be open for such statements to be submitted at a later point in time.

There are however two persons representing organizations with written statements who had hoped to briefly make a presentation. I would like to call them forward.

Willis J. Merriman represents the Commission on Church in Society, Wisconsin Conference of Churches, and Thomas Rannells represents the Wisconsin Conference, Council on Ministries of the United Methodist Church. If they are here I would ask you to come forward.

TESTIMONY OF WILLIS J. MERRIMAN, COMMISSION ON CHURCH IN SOCIETY, WISCONSIN CONFERENCE OF CHURCHES, AND THOMAS RANNELLS, COUNCIL ON MINISTERIES, WISCONSIN CONFERENCE, THE UNITED METHODIST CHURCH

Mr. Merriman. I appreciate the opportunity to appear before this subcommittee representing a program unit of the Wisconsin Conference of Churches, of which I serve as executive director. The Commission on Church in Society has gone on record in opposition to President Carter's proposal to return to draft registration and the eventual conscription of 19- and 20-year-olds.

Draft registration is neither a partisan policy issue nor an issue of national security. It is, rather, an attempt on the part of the administration and the military to divert our attention from the failure of the administration to deal significantly with domestic problems and to replace solid diplomacy with a showing of force.

It is not my intention to deal with the issues of mobilization requirements, military preparedness, or the need for a larger standing military force. Recent history and official governmental reports have already raised serious questions as to whether or not reinstatement of registration would have any significant effect on either the time or the ability for the United States to respond to a military crisis or a situation of war.

Registration and conscription have only been in effect for 30 of our 200-year history, and except for the Vietnam era, compulsory national service has never been invoked in a time of peace. In fact, compulsory national service runs contrary to the American tradition of individual freedom.

Military conscription is an infringement on personal freedom, justifiable only in times of national crisis. One can argue that the President's proposal is for registration only, but it is quite apparent that even registration is for the possibility of an eventual draft. If registration were enacted it clearly would be in violation, at the very least, of the IV, V, and XIII amendments of the Constitution of the United States.

Draft registration and the present Selective Service Act are filled with violations of individual rights. No provisions are made for the right of counsel. Due process is totally ignored. The President is proposing no substantive changes in the Selective Service Act, therefore perpetuating a system that is discriminatory and in violation of human rights that have supposedly been the bulwark of the present administration.

Draft registration also raises questions of privacy. The Privacy Acts of 1974 and 1976 set certain restrictions on the collection, maintenance, and dissemination of information by the Government. Registration skirts, if not violates, these restrictions.

We have talked about those persons who do not register. For those of us who have questions about some of the things in the criminal justice system it would be a bon in terms of collapse of the criminal justice system and we need to revamp it in more human terms.

The registration and draft are two sides of the same coin. We cannot deal with one and not the other. The Selective Service System is fraught with inequities, discrimination, violation of civil and human rights. It strikes at the heart of basic values which brought this Nation into existence. The proposed draft registration is riddled with problems.

There are two documents connected with this testimony. One is the pronouncement adopted by the Seventh General Synod of the United Church of Christ and another adopted by the National Council of the United Churches of Christ of January of this year, both opposing registration.

Mr. **Kastenmeier.** Without objection your attachment and statement will be laid in the record. I compliment you on your statement.

[The documents follow:]

Statement by Willis J. Merriman, Representing the Commission on Church in Society of the Wisconsin Conference of Churches

I appreciate the opportunity to appear before this subcommittee representing a program unit of the Wisconsin Conference of Churches, of which I serve as executive director. The Commission on Church in Society has gone on record in opposition to President Carter's proposal to return to draft registration and the eventual conscription of 19 and 20 year olds.

Draft registration is neither a partisan policy issue nor an issue of national security. It is, rather, an attempt on the part of the administration and the military to divert our attention from the failure of the administration to deal significantly with domestic problems and to replace solid diplomacy with a showing of force.

It is not my intention to deal with the issues of mobilization requirements (military preparedness) or the need for a larger standing military force. Recent history and official governmental reports have already raised serious questions as to whether or not reinstatement of registration would have any significant effect on either the time or the ability for the United States to respond to a military crisis or a situation of war.

Registration and conscription have only been in effect for 30 of our 200 year history, and except for the Vietnam era, compulsory national service has never been invoked in a time of peace. In fact, compulsory national service runs contrary to the American tradition of individual freedom.

Military conscription is an infringement on personal freedom, justifiable only in times of national crisis. One can argue that the President's proposal is for registration only, but it is quite apparent that even registration is for the possibility of an eventual draft. If registration were enacted it clearly would be in violation, at the very least, of the IV, V, and XIII amendments of the Constitution of the United States.

Draft registration and the present selective service act are filled with violations of individual rights. No provisions are made for the right of counsel. Due process is totally ignored. The President is proposing no substantive changes in the selective service act, therefore, perpetuating a system that is discriminatory and in violation of human rights that have supposedly been the bullwark of the present administration.

Draft registration also raises questions of privacy. The Privacy Acts of 1974 and 1976 set certain restrictions on the collection, maintenance, and dissemination of information by the government. Registration skirts, if not violates, these restrictions.

Another question which the proposed registration for the draft raises is: what will happen to those persons (18–20 year olds) who do not register at their neighborhood post office. Representative Kastenmeier has indicated that even if 2% refuse to comply this would be nearly 80,000 persons. I venture that this is a very conservative estimate. 10%–20% would, perhaps, be more accurate. One could argue that this might be the way to bring a total collapse to our criminal justice system.

Attached to this testimony is a document on the selective service system adopted by the United Church of Christ in 1969. It relates to the revamping of the selective service system, and adequately reflects the concerns and issues of those church groups related to the Commission on Church in Society of the Wisconsin Conference of Churches.

I would close this testimony by saying that a registration and draft are two sides of the same coin. We cannot deal with one and not the other. The selective service system is fraught with inequities, discrimination, violation of civil and human rights, and strikes at the very heart of the basic values which brought this nation into existence. The proposed draft registration is riddled with no less.

The Selective Service System: A Pronouncement Adopted by the Seventh General Synod of the United Church of Christ, June–July 1969

Recognizing that the Selective Service System raises many issues of justice and of the rights and responsibilities of all citizens, the Seventh General Synod of the United Church of Christ adopts the following statement. The reasoning in this proposal leads to three major conclusions: (1) that we return to our historic policy of voluntary armed forces; (2) that the Selective Service System be invoked only in times of national emergency so declared by the Congress; and (3) that the Selective Service System be revised to eliminate its many inequities.

I. THEOLOGICAL FOUNDATIONS

The Christian Church, directed by its Lord to seek both peace and justice, knows that both require costly efforts. In the present world, armies and military establishments are one method by which nations seek to protect themselves and fulfill international obligations. Christians hope and work for a world in which old methods of military coercion and threat will give way to more peaceable methods of establishing world order. But so long as nations maintain armies, their ways of doing so raise major issues of justice, which are the concern of the Church.

Any society must find ways of distributing its burdens among its people. Christian faith knows that, whether voluntarily or by necessity, men are members of one another. Scripture and experience lead us to reject any individualism that ignores the responsibility every man has to society and any collectivism that regards persons only as instruments of the society. Government is one method by which society tries to harmonize the demands upon the individual and the securing of his freedoms. A people concerned for justice seeks the best governmental devices for sharing the costs and duties of society, allowing the maximum interaction of personal freedom and social responsibility. In this process the Church has a special responsibility, coming directly from Christ, to champion the poor, victims of prejudice, and all those whom society is likely to ignore or silence. Faithfulness to God and concern for men require us to seek justice for all.

II. THE RESTRICTION OF MILITARY CONSCRIPTION TO NATIONAL EMERGENCIES

Throughout their history the American people have regarded military conscription as an emergency measure for times of national crisis. Many of the citizens of this nation, emigrating from European countries where military conscription was in effect, found one of the evidences of American democratic freedom to be the absence of compulsory military service.

Now the once exceptional practice has become the routine. For more than a quarter of a century (with a hiatus in 1947–1948) the United States has been drafting citizens for military service.

We do not here maintain that there should never be a military draft. Military conscription has been used in our national history, with public approval, as a method of assigning manpower during times of crisis. However, we challenge the use of the draft as normal public policy. We ask for a return to the American tradition which regarded military conscription as an emergency device. The only justification for military conscription is an emergency that requires the exceptional mobilization of the nation's resources and manpower—an emergency to be determined not by executive fiat but through a declaration by the Congress as the major representative voice of the American people.

We offer two reasons for our stand:

1. Military conscription is an infringement on personal freedom, justifiable only in times of national crisis. It is more drastic than governmental appropriation of property; it appropriates the person, not merely his property. It deprives him of the freedom to choose his place and way of earning a living. It subjects him to a system in which his behavior, for obvious reasons, is largely prescribed. It subjects him to risks, sometimes to the virtual certainty of death. It commands him to do things, including the killing of other men, that he may believe to be morally offensive.

To say this is not to pass judgment on men who thoughtfully choose to enter military service. On the contrary, we recognize that those who freely serve in the armed forces have helped to safeguard our own freedom and that of others as well. But military conscription (with its implication that men are not likely to serve without compulsion) takes away from the dignity of the conscientious volunteer. It lets society avoid facing the obligation to pay fairly for the service it expects from some.

2. A selective draft is inherently unfair. It requires an immense service, perhaps including death, of some men while leaving others free to choose their

own goals and ways of life. We recognize that men have social responsibilities and that society must sometimes impose the fulfillment of those responsibilities. But in the case of the draft the imposition is capricious. Therefore, any selective draft is justifiable only in an emergency democratically determined by the people's representatives.

For these reasons we urge a return to the American tradition in which the draft is the exception rather than the normal procedure.

III. REFORM OF THE PRESENT SELECTIVE SERVICE SYSTEM

When military conscription is declared necessary, the Selective Service System should be organized and administered within the framework of principles which are consistent with the theological and historical considerations referred to above.

Among these principles are the following:

1. Every attempt should be made to eliminate the prolonged uncertainty every draft-eligible young man faces between the ages of 19 and 26. A method should be devised which provides maximum opportunity for the registrant to be free to plan his education and/or career without fear of interruption by immediate induction. The proposal to reverse the present order of call from induction of the oldest first to the youngest seems to be consistent with this principle.

2. The system of selection should eliminate the inequities of the present policy wherein determinations vary greatly among local draft boards. We believe that a more equitable method is a system of impartial random selection on a national basis.[1] A greater degree of uniformity should be provided in the law as to procedures, regulations, and guidelines for classification of registrants.

3. Deferments of students should be so designed as to prevent complete exemption from or evasion of responsibility under the Selective Service System.

4. Revision should be made in the present Selective Service System to eliminate from its operation all elements which have the effect of discriminating against those of a particular race or economic class. For example, membership on all local and appeal boards should reflect the economic and ethnic composition of the community and area they serve.

5. Under no circumstances should the draft be used as an instrument for discouraging dissent or protest against the political, social, economic, or military policies of the government, nor should military service be used as punishment for such activities.

6. Deferments of young men because of their occupations should be discontinued.

7. Exemptions of clergy, ministerial and pre-ministerial students should be repealed.

8. Every attempt should be made to revise the Selective Service law to eliminate the many procedural inequities which presently exist in order to protect the rights of individual citizens. Specifically, the law should do the following:

(a) Require the publication of an informative and readable booklet detailing the legal rights as well as the responsibilities of registrants and the procedures of the system. Such a publication should be distributed at government expense to all registrants.

(b) Allow the registrant's lawyers to appear with him at a fair hearing on any decision affecting his rights and on any appeal decision. It should give fair notice of the action proposed to be taken at all such hearings; permit counsel to participate fully, to call and examine witnesses, and to confront all adverse evidence; and cause a record of the entire proceedings to be made for the purpose of appeal or judicial review.

(c) Provide for legal services (as by a pool of lawyers) to registrants, similar to the public defender system.

(d) Subject decisions of the Selective Service System to scrutiny in judicial review by the normal standards which require that administrative determinations be supported by some substantial evidence in the record to sustain a test of their validity and lawfulness in the courts; and

(e) Permit a registrant to seek such judicial review before being ordered to report for induction. He should not need to wait until the government has either inducted him—possibly wrongly—or charged him with a crime in order to test the validity of the Selective Service determination.

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[1] Such was recommended by the National Advisory Commission on Selective Service (Marshall Commission).

CONCLUSION

The present Selective Service System is in need of drastic revision if even minimum safeguards are to be obtained, not only to protect individual freedom but also to provide for national security. In recognition of this need, we call upon our members, churches, and Conferences to urge the United States Congress to work immediately toward reform of the present Selective Service System along the lines suggested here and to work for the return to our historic policy of voluntary armed forces and toward the abolition of military conscription except in times of Congressionally declared national emergency.

(A pronouncement is a declaration of Christian conviction on a matter of social principle, approved by the General Synod and directed to the churches and to the public.—Operating Rules of the General Synod.)

RESOLUTION ON REGISTRATION FOR SELECTIVE SERVICE; NATIONAL COUNCIL OF THE CHURCHES OF CHRIST IN THE U.S.A.

(Adopted by the Executive Committee, February 15, 1980)

Whereas the National Council of the Churches of Christ in its policy statements affirms that national security rests on the development of international economic and political cooperation, the peaceful settlement of disputes, and the determination to abolish war;[1] and

Whereas the National Council of the Churches of Christ in its policy statements opposes permanent universal military training as inimical to our heritage as a free nation under God and a step in the direction of a garrison state;[2] and

Whereas registration for Selective Service is the initial and essential step to a military draft, and represents one aspect of the growing militarization of the general population, and of young people in particular; and

Whereas the significant unresolved societal issues of racism, sexism and economic discrimination are exacerbated in and by the military, as evidenced by many veterans and others who are still victimized by the legacy of the Vietnam War, and are not alleviated by a shift from an all volunteer military to registration and the draft; and

Whereas the proposal of the President of the United States to the Congress to institute registration for Selective Service is evidence of recruiting and increasing reliance on military responses to world problems;

Therefore, be it resolved: That the National Council of the Churches of Christ in the U.S.A.:

1. Calls upon the Congress of the United States to reject the President's request for appropriations and legislation to institute registration for the Selective Service;

2. Calls upon both the President and the Congress to seek and pursue economic development and political cooperation as non-military methods to secure justice, peace and reconciliation among the nations of the world;

3. Calls upon its member communions to:

(a) Oppose appropriations and legislation to implement registration for Selective Service;

(b) Establish, support and encourage educational and counseling programs, so that all men and women may make informed decisions regarding reigstration for the draft, with particular concern for those forced to consider military service by pressures of economic and racial discrimination;

(c) Increase efforts to achieve international security through respect for the integrity of other countries and their populations, through efforts at arms control and progressive disarmament, and through support of the United Nations' peacekeeping efforts.

Mr. KASTENMEIER. Mr. Rannells, you may proceed.

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[1] "Imperatives of Peace and Responsibilities of Power," February 21, 1968. "Defense and Disarmament: New Requirements for Security," September 12, 1968.

[2] "Universal Military Training," January 30, 1968.

Mr. Rannells. Representative Kastenmeier and Representative Carr, I appreciate the chance to speak. I will make my remarks brief. You have before you my statement. I will not read that.

It seems to me it is important in these hearings to be clear that the main line religious bodies are concerned about registration and conscientious objectors. We in the United Methodist Church allow for conscience, of those who follow their conscience to be a part of the military system and those who choose not to.

We would like to argue that that right be observed for all religious bodies and that that category be reserved for that.

I would like to indicate that it is important to observe the right that pastors and other concerned lay people within our denominations to counsel our men and women in regard to their statement of conscience. It becomes intimidating that one does that at the risk of 5 years in prison and a $250,000 fine. I think that has implications as to my civil rights as a pastor and my responsibilities to the persons of the church, and I would like this committee to look at that closely.

The United Methodist Church, beginning this week and next week in Indianapolis will debate the issue of registration. I will not predict at this point where we will come out but that debate will be going on in the next 2 weeks.

Likewise, the Wisconsin Board of Church and Society will be debating the problem. Where they will come out I'm not sure.

I want to say my reading is that the concern for registration is a concern of all of the people of Wisconsin, not just of the people of Madison, and it is a concern of the people of the Nation as well.

Thank you.

Mr. Kastenmeier. Thank you, Reverend Rannells. for your statement. You are well advised to wonder what the revisions in law may have in terms of the interpretation of counseling young people who have questions about selective service. That is left as a question as you know, and Congress will have to research that.

I wish you the best in your own deliberations. I hope you don't suffer the same fate as the U.S. Olympic Committee in terms of having the President represented there to coerce his point of view.

Mr. Carr. I too want to thank you and appreciate your coming.

Mr. Kastenmeier. Your testimony is a valuable addition to the record, and we are grateful for your contribution.

[The document follows:]

COUNCIL ON MINISTRIES,
WISCONSIN CONFERENCE,
Sun Prairie, Wis., April 11, 1980.

Re Wisconsin United Methodist Position on Registration and the Draft for Military Service for the U.S. Judiciary Subcommittee on Courts, Civil Liberties, and the Administration of Justice.

HON. ROBERT W. KASTENMEIR,
House of Representatives,
Washington, D.C.

DEAR MR. KASTENMEIER: As the nation once again considers the resumption of registration for the draft and potentially the resumption of the draft itself. I would like to state before this hearing the position of the United Methodist Church. The Discipline (the official positions and policies of the United Methodist Church) makes the following statement regarding military service:

Though coercion, violence, and war are presently the ultimate sanctions in the international relations, we reject them as incompatible with the gospel and spirit of Christ. We therefore urge the establishment of the rule of law in international affairs as a means of elimination of war, violence, and coercion in those affairs. We therefore reject national policies of enforced military service in peacetime as incompatible with the gospel. We acknowledge the agonizing tension created by the demand for military service by national governments. Thus, we support those individuals who conscientiously oppose all war, or any particular war, and who therefore refuse to serve in the armed forces or to cooperate with systems of military conscription. We also support those persons who conscientiously choose to serve in the armed forces or to accept alternate service. Pastors are called upon to be available for counseling with all youth who face conscription including those who conscientiously refuse to cooperate with a selective service system.

Speaking further on this issue, the United Methodist Church's General Board of Church and Society, with membership elected to represent our National constituency, meeting on October 5, 1979 issued the following statement:

The United Methodist Church since its inception in 1968 has consistently opposed peacetime conscription. In doing so, it has heeded its Lord's injunction to know and to seek the things that make for peace. The vision of peace portrayed so graphically in Isaiah and Micah concludes with the expectation that the day will arrive when men and women shall no longer learn the ways of war.

Despite the fears of some, we do not believe the military conscription is essential to the security of nations in time of peace. In fact, evidence indicates that conscripted armed forces can be used to conduct unpopular and unauthorized wars for which volunteers would be unavailable.

Some countries require that all young people perform national service, military or civilian, and other countries are proposing to do the same. The cost and bureaucracy of such massive undertakings are enormous; the opportunities for indoctrination pose a constant threat to peace and freedom; the invasion of personal liberty and privacy is alarming; and the value of such involuntary service is dubious.

We urge all United Methodists to oppose compulsory registration and induction of persons into any system of military or civilian conscription and to work toward its elimination where it exists.

Responding to the discussion of potential registration during 1980, the Wisconsin Board of Church and Society, whose membership are elected to represent our Wisconsin constituency, meeting on March 8, 1980 issued the following statement:

Whereas, the love of God calls us to live in harmony with fellow human beings, we reject all military actions to resolve international problems.

Therefore,

1. We oppose national registration for the draft;
2. We call for a moratorium on the development and production of all nuclear weapons;
3. We advocate the support and strengthening of the United Nations and other means of international cooperation for the nonviolent resolution of international disputes;
4. We affirm our resolution of the last Annual Conference, that:

A. We continue ". . . to support the acceptance of a SALT II agreement, recognizing that it is inadequate, and urge our government to proceed with bold initiatives in succeeding agreements"; and

B. ". . . Calls upon the government of the United States to undertake a 5 percent reduction each year, in constant 1979 dollars, in all areas of military expenditures, including military related research, the export of arms, and related sales to other countries. This reduction is to be unilateral, independent of the effect of agreements or the action of other nations. This reduction is to begin in the next fiscal year, and is to be repeated each year until such expenditures are reduced 25 percent, in constant 1979 dollars."

The use of the nation's and world's resources for military expenditures as a direct cause of world hunger and inflation points to the urgency of these resolutions.

These statements indicate that United Methodists recognize persons of good conscience can and do differ in regard to their relationship to the armed service. We respect and honor such decisions of conscience. However, we are clearly opposed to draft during peacetime because it has historically served as a prelude to war. On this subject, the United Methodist Church expresses itself clearly in the following way:

We believe war is incompatible with the teachings and example of Christ. We therefore reject war as an instrument of national foreign policy and insist that the first moral duty of all nations to to resolve by peaceful means every dispute that arises between or among them; that human values must outweigh military claims as governments determine their priorities; that the militarization of society must be challenged and stopped; and that the manufacture, sale, and deployment of armaments must be reduced and controlled.

In regard to the current debate, one cannot help but be deeply concerned about the following questions:

1. Is not the assumption underlying registration that an enlarged pool of persons (men and women) are to be available for potential wars?

2. If registration is not for this purpose, then for what purpose does it exist and why are we engaging in it after its suspension and replacement by a voluntary armed forces?

3. What provisions and protection will be made for those who because of conscience feel that registration for the draft is a violation of their religious opposition to war?

4. What provisions and protection will be made to protect the civil rights of those who choose because of conscience and religious practice not to participate in war and therefore in registration for war?

In conclusion, we wish to register our historic opposition to peacetime draft and/or registration. However, should war necessitate a draft, we urge congress to provide clearly for persons to hold and exercise their legal right not to participate in war. Further, we urge congress to maintian our current volunteer army which clearly allows those whose conscience support this involvement to freely make this choice and those whose conscience does not support such involvement to exercise their choice of non-participation. If the current voluntary program is failing to meet personnel requirements then let us not risk a return to the 1960's when the lives of our families and nation were faced with the wrenching pain, the effects of which are still with us, wrought on those whose conscience were not respected and whose civil and human rights were violated. The best way to avoid this risk is to continue the current volunteer system. Finally, let the power to register as well as the power to draft and declare war rest with the congress whose constitutional responsibility it is to represent the people of our nation.

Sincerely,

Rev. Thomas A. Rannells,
Executive Staff,
Wisconsin Conference United Methodist Church.

Mr. KASTENMEIER. This concludes our hearing here in Madison. As I stated at the outset, we will continue in Washington on this subject and we hope that through this subcommittee and the Congress we will have answers to some of the questions raised. We further hope that our fellow citizens will be better able to make a judgment and that we in Congress will have the time to debate this question before rushing into a course of action from which we may never be able to return.

I want to express the regrets of Congressman Railsback, Minority Counsel Wolfe and Curtis Tarr, all of whom could not be here because of the spring snowstorm.

I wish to express my thanks to all who attended this hearing and stayed throughout the entire testimony this morning. This was a delightful, orderly hearing. There have been other times, other places where there have been anger and disruption. Today, this was a very sobering subject. I think your respectful presence is a testament to your concern.

Accordingly, the committee will stand adjourned.

[Whereupon, at 12:55 p.m., the committee was adjourned.]

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IMPLICATIONS OF DRAFT REGISTRATION—1980

THURSDAY, MAY 22, 1980

House of Representatives, Subcommittee on Courts,
Civil Liberties, and the Administration of Justice of
the Committee on the Judiciary,
Washington, D.C.

The subcommittee met at 2:12 p.m. in room 2226 of the Rayburn House Office Building, Hon. Robert W. Kastenmeier (chairman of the subcommittee) presiding.

Present: Representatives Kastenmeier, Gudger, Railsback, and Sawyer.

Also present: Michael J. Remington, counsel; Joseph V. Wolfe, associate counsel.

Mr. **Kastenmeier** [presiding]. The meeting will come to order.

Welcome to this afternoon's hearings on the civil liberties and administration of justice implications of draft registration.

This is the committee's second day of hearings, the first having been held on April 14, 1980, in Madison, Wis. This is an official congressional hearing authorized by the House Committee on the Judiciary, and in this regard, the rules of the committee and rules of the House suggest that I obtain unanimous consent that the committee permit the meeting this afternoon to be covered in whole or in part by television, radio broadcast, or still photography.

Without objection, that will be permitted.

As I stated at the outset of the hearings, one of the greatest responsibilities on the shoulders of national leaders, executive as well as legislative, is to anticipate the results of laws. If the administration is serious about a return to draft registration, and I'm sure it is—in fact, I anticipate that at this point in time, it is likely that the Senate will concur in the House action on the appropriations bill relating to draft registration, however I may feel about it or others—but in any event, the public should be aware of the impact that this proposal will have on people's lives and on our Government's institutions

Then, the public can better communicate its willingness to support such a program as far as its national representatives are concerned or to make other recommendations with respect to its operation.

In a period of great demand for regulatory reform, for budget cutting, for concern about the intrusion of the Federal Government in the lives of people, businesses, and others, it's obvious that we have to be very careful about analyzing proposals to enlarge the Government's role and impact on our lives.

Our first witness this morning is Dr. Bernard Rostker, director of the Selective Service System. Dr. Rostker was appointed to that position in November of 1977. Dr. Rostker has a Ph. D. in economics. He was a captain in the Army between 1968 and 1970. He joined the Rand Corp. in 1970. In the latter capacity, he headed the project, Air Force manpower personnel and training program.

In 1977, Dr. Rostker left Rand and became Assistant Secretary of the Navy for Manpower and Reserve Affairs. He is eminently qualified to discharge the duties presently he is undertaking as director of the Selective Service System.

It's a pleasure to have you with us, Dr. Rostker, and you may proceed as you wish.

TESTIMONY OF BERNARD ROSTKER, DIRECTOR, SELECTIVE SERVICE SYSTEM

Dr. **Rostker**. Thank you, sir. I have a short statement, if I might.

I appreciate the opportunity to appear before the committee today to discuss the revitalization of Selective Service and our efforts to insure that if we ever need to reactivate the System, it will be just and equitable. If we are to have an effective System, we must have the full support of the American people. This can only be done if we are diligent in building the System based in law which treats all people fairly.

The System today is very different from that which most Americans remember from the 1960's. A nationwide lottery was introduced in 1970. Selection for induction will be determined during an emergency and only if the Congress approved inductions on the basis of a registrant's random sequence number in a single prime year.

This has resulted in a reduction of prime draft vulnerability from 7 years to 1 and would enable a young man to make more certain future plans.

Changes were also made in the classification categories. In April 1970, the issuance of new deferments on the basis of occupation and paternity were terminated. In 1971, amendments to the Military Selective Service Act terminated the deferments of students, effectively limiting claims to those of hardship and conscientious objection.

These amendments also established certain rights to hearings for registrants before local and appeal boards and require stated written reasons for denial of requested classification.

To a very real extent, the quality of the system will be judged by the American people in terms of the treatment they receive at the hands of local draft boards.

Accordingly, plans and budgets before the Congress call for the recruitment next year of 8,500 citizens, who, in an emergency, could become the local board members who would adjudicate claims. Those volunteers will, for the first time in the history of the agency, be formally trained in Selective Service policies and procedures.

Mr. Chairman, at each step in the revitalization process every effort has been made to guarantee the protection of rights of our citizens. We are totally committed to develop a Selective Service System that is fair and equitable.

I am ready to answer any questions you may have, sir.

Mr. **Kastenmeier**. Thank you, Dr. Rostker, for that brief statement.

[The prepared statement of Dr. Rostker follows:]

Statement of Dr. Bernard Rostker, Director, Selective Service System

Mr. Chairman and Members of the Subcommittee: I appreciate the opportunity to appear today to discuss the revitalization of the Selective Service and our efforts to ensure that if we ever need to reactivate the System it will be just and equitable. If we are to have an effective System we must have the full support of the American people. This can only be done if we are diligent in building a System based in law which treats all people fairly. The System is very different from that which most Americans remember from the 1960's. A nationwide lottery was introduced in 1970. Selection for induction will be determined during an emergency, and only if the Congress approves inductions, on the basis of a registrant's random sequence number in a single prime year. This has resulted in a reduction of prime draft vulnerability from 7 years to 1 and would enable a young man to make more certain future plans.

Changes were also made in the classification categories. In April, 1970 the issuance of new deferments on the basis of occupation or paternity was terminated. The 1971 amendments to the Military Selective Service Act terminated the deferment of students effectively limiting justiciable claims to those of hardship and conscientious objection.

These amendments also established certain rights to hearings for registrants before local and appeal boards and required stated written reasons for denying a requested classification.

To a very real extent the quality of the System will be judged by the American people in terms of the treatment they receive at the hands of local draft boards. Accordingly, plans and budgets before the Congress call for the recruitment, next year, of 8500 citizens who in an emergency could become the local board members who would adjudicate claims. These volunteers will, for the first time in the history of the agency, be formaly trained in Selective Service policies and procedures.

Mr. Chairman, at each step in the revitalization process every effort has been made to guarantee the protection of the rights of our citizens. We are totally committed to developing a Selective Service System that is fair and equitable.

I am prepared to answer any questions you may have.

Mr. Kastenmeier. In terms of the number of people we're talking about who would be required to register under the President's program, how many would be involved; do you know?

Dr. Rostker. As a rough rule of thumb, there are 2 million people in each of the 2-year-of-birth groups that we are requiring to register.

Mr. Kastenmeier. Roughly 2 million males.

Dr. Rostker. Yes, sir, in each of the 2-year groups.

Mr. Kastenmeier. For each of 2 years?

Dr. Rostker. Yes.

Mr. Kastenmeier. Therefore, there would be 4 million——

Dr. Rostker. Approximately 4 million.

Mr. Kastenmeier [continuing]. Who would be exposed to the registration requirement. Dr. Curtis Tarr, in really an eloquent statement presented to the subcommittee, observed, and I quote him:

> I foresee the possibility of evasion by large numbers that would overwhelm the agencies for law enforcement and the judiciary. The law that cannot be enforced surely is no law at all.

Dr. Tarr served as your predecessor. From 1970 to 1972, he was the Director of the Selective Service System. The possibility of large-scale evasion is of concern to us.

What is your own view on that statement or the premise that there will be large numbers who might evade registration?

Dr. Rostker. I can only make a determination based on the history of the agency. By all accounts, registration has never been a problem. The registration is simply a start in the process.

If it ever becomes necessary to reinstate conscription, the procedures that the Congress has provided in law and the regulations of the agency are adequate to safeguard the constitutional rights of individual registrants. The courts have consistently upheld that failure to register is not an appropriate action in terms of a person's rights and responsibilities under the Military Selective Service Act.

In the history of the agency, we have witnessed no major problem in registration compliance and we would expect that this would carry through into the future.

Mr. Kastenmeier. Dr. Rostker, for whatever reason, and certainly, one might well counsel young people against avoiding legal responsibilities—notwithstanding that counsel and advice, Dr. Tarr, for example, thought that there might be as many as 10 percent or 400,000 lawbreakers. Other surveys have been taken which indicate in some categories upward of 40 percent might, for one reason or another, fail to comply with registration.

One of the questions that predicates this analysis is that for many who, for whatever reason, wanted to make a conscientious statement about military service, could not do so now at the draft level or the callup level since there is no draft, consequently, registration might become the first line for those who may wish to make some comment, whatever expense it may be to themselves as persons.

With these the previously mentioned statistics about nonregistration in mind or at least these forecasts, I'm wondering whether it wouldn't be more reasonable to anticipate, whether we like it or not, a larger degree of noncompliance if that alone stands as a statement of reaction to national policy or perhaps even whim that might concern, or ignorance, or whatever other conditions might cause a young male to decline or to fail to register.

Dr. Rostker. Sir, I have, and I'm sure you share it, a deep and abiding faith in the American democratic process. The political dissent is best handled through the ballot box. Everyone in this age group that we're talking about certainly will have the opportunity to vote and to make his views known through that political process.

We, as a society, have never uniformly recognized the rights of massive street violence or massive dissent. The President has proposed a return to registration because, in his views, it is necessary to insure that this Nation is prepared. The House of Representatives has supported that viewpoint with a majority of 39 votes. That is the democratic process.

The failure to register is a Federal crime. A person who wants to make a political statement by failing to register leaves himself liable for a very stiff penalty.

If there is a personal commitment, such as a conscientious objection to war, there are procedures in the agency guaranteed by the courts which will allow a person in due course to so make application.

Mr. Kastenmeier. But it is not a question of whether you or I might agree on what the obligation of a young citizen may be. The question is, notwithstanding your advice or the President's advice to them, will we still have a large number of persons who will be out of compliance, perhaps some wilfully and knowingly.

The ultimate question, and I want to quote your own statement—apparently, it's your own statement—really deals with the Privacy Act and if this doesn't reflect your point of view, I apologize. But someone suggested that you had said in an interview on Pacifica Radio Network, and I won't recite that which you said about the Privacy Act, but rather: "Rest assured. We take the enforcement of this seriously." And I assume you're referring to registration here. "It is a felony crime not to register. We will endeavor to identify the people who do not register."

I do not quarrel with that statement, but the point is that we have to assume then you are serious about it, the administration is serious about it, and if we have hundreds of thousands of people out of compliance, they indeed, at least under present law, would be guilty of a felony, certainly if this is a knowing and willing act on their part. And as a result, we have to think about what this means in terms of the Justice Department, the criminal justice system, and the courts.

I assume that you're aware of all of that.

Dr. **Rostker.** Yes, sir. As you are well aware, I, as a Federal official, take an oath to uphold the Constitution.

Mr. **Kastenmeier.** Of course.

Dr. **Rostker.** I would do nothing less than, with the support of the Congress, as it would be so indicated through the funding of the program, endeavor to enforce the Military Selective Service Act.

Mr. **Kastenmeier.** Let me ask you, have you had consultations with the Justice Department in anticipation of problems of compliance with the registration program, of enforcement?

Dr. **Rostker.** We have had some discussions with the Justice Department.

Mr. **Kastenmeier.** What, if anything, have you concluded with respect to enforcement?

Dr. **Rostker.** We will, from our point of view in the agency, try to develop a program for the identification of nonregistrants. Those names would be forwarded to the Justice Department. And at that point, really, how the Justice Department would have to address plans for the enforcement of the program.

I see my responsibility as the manager of the program to identify individuals who we believe wilfully disobey the law.

Mr. **Kastenmeier.** On that point, it's my impression—and, of course, the administration, the Department of Justice can speak for itself—that the Department does not intend to seek mitigation or seek compliance through coerced enlistments or some of the devices used quite extensively in the past. As you know, in the past, rather than prosecute individuals who are out of compliance or who have wilfully violated the law, the Department has accepted an enlistment in exchange for a dropping of the prosecution.

My understanding is they may not be following that. They have no plans to enter into that type of accommodation.

Dr. **Rostker.** I really cannot speak for the Justice Department. I would like to draw at this point a very sharp distinction. We are not talking about a system of induction, we're talking about a system of registration, so that in a national emergency, and with the explicit approval of the Congress, we could expedite military mobilization.

The problem we are really discussing is the willful failure to register. The courts have consistently held that this is not a matter of protection of rights for persons such as conscientious objectors since there are procedures within our system to make sure that we carry forth that program.

But we can't start that program if we simply don't know who these people are, if they refuse to abide by the rules and regulations that Congress has provided.

Mr. **Kastenmeier.** During the Vietnam era Selective Service maintained what I guess could be best called a flexible policy toward registration. Not many of the thousands of nonregistrants were identified and of these, very few were referred to the U.S. Attorney's office for prosecution, very few of these cases.

And then many of them avoided prosecution by just simply agreeing to register. I was going to ask you, do you foresee the same sort of flexibility under President Carter's registration plan or do you think there would be a much more aggressive, vigorous attempt to identify the individuals and prosecute them?

Dr. **Rostker.** We will try to identify the individuals. It would be, I think, best for all concerned if people registered and participated in the appropriate fashion.

But I think I have a responsibility to actively enforce all facets of the law. I would be derelict if I disregarded my obligation in terms of insuring due rights of conscientious objectors. I would be derelict if I ignored the willful failure to register.

Mr. **Kastenmeier.** Dr. Rostker, could you entertain a 10-minute recess? We have to vote on the final passage of a bill. I have a couple more questions and Mr. Railsback has some questions.

Dr. **Rostker.** It will be my pleasure.

Mr. **Kastenmeier.** Accordingly, the subcommittee will stand in recess for 10 minutes.

[Recess.]

Mr. **Kastenmeier.** The committee will come to order. Dr. Rostker, in the last week or two there have been some public reference to registration forms which we are told have been available for a period of time. In fact, I have a copy of a form which purports to be one of them here.

Among other things, it does suggest to prospective registrants that "your failure to provide the required information may violate the Military Selective Service Act. Conviction of such violation may result in imprisonment of not more than 5 years or a fine of not more than $10,000, or both imprisonment and fine." It also makes a reference to the reading of the Privacy Act.

I wonder, what is the purpose of the privacy statement? Is it, in fact, to prepare a foundation for subsequent legislation waiving the sections of the Privacy Act? Might you not seek that?

Dr. **Rostker.** There are two parts to that question. It is my understanding that we are required by the Privacy Act to make a Privacy Act statement on the registration form. We, in the design of that form, provided that statement. The information was reviewed by representatives from OMB in their capacity of controlling the various forms that are published in the Federal Government. They indicated to us that this was a correct reading of the law. And as I'm sure you know, almost everything that goes out in the Federal Government, from income tax forms to our proposed registration, must now carry Privacy Act information.

As far as the future is concerned, we are very cognizant about the provisions of the Privacy Act. I have stated publicly on numerous occasions that we have no plans at the present time to use data for any purpose from other Government agencies.

However, we reserve the right at some future date to come to the Congress for an amendment to the Privacy Act which would give us access to that data.

And as you are aware, we could not in fact gain access to that information without the explicit approval of the Congress.

Mr. Kastenmeier. That is correct. But I would assume you would agree that it would be very much easier to enforce the registration compliance if you, for example, had access to the social security system's numbers and identifying ages and names.

Dr. Rostker. That is correct. But we are explicitly precluded from doing that. We have not asked the Congress for that additional authority, but I cannot project the future. I would not categorically rule out the possibility that we might request that authority at some future date.

Mr. Kastenmeier. As to conscientious objector status, I know that the Selective Service System in the past few years has solicited studies suggesting how it might modify conscientious objector status, to what extent it's been a problem and how it might be handled.

And we're familiar with the Gurwitz and Mueller reports. But I wonder, other than these, if you've done any specific thinking about legislation restricting or curtailing CO status? If so, to what effect.

As a second followup question, I assume that it's your position that that status should be applied for or denominated by the registrant at a later point in time than at registration. This should occur at the classification, or call-up than the registration point in time.

Dr. Rostker. That's correct. I appreciate the opportunity to put the Gurwitz report in the proper perspective. I, myself, have never reviewed that report. It was written by a reserve officer as a summer tenure as Director.

It became a matter of concern when we had several Freedom of Information Act requests for it. We are not obliged under the Freedom of Information Act to provide that type of a report since it does not in any way reflect the views of the agency. Once the requests began, however, I issued an order that the report not be destroyed.

It has been consistently our policy that this report does not in any way represent the views of the agency.

Mr. Kastenmeier. What does represent the views of the agency, Dr. Rostker?

Dr. Rostker. Congress has provided legislation for conscientious objection, and the courts by interpreting the first amendment have extended that provision. In no way would we recommend the revision of conscientious objection as a category nor would we in any way modify the present definitions of conscientious objection. We, as an agency, are concerned that procedures be developed that will, in a fair and equitable manner, insure that local board members have the ability to adjudicate C.O. claims consistent with definitions in court rulings.

You indicated that we may possibly interchange those definitions, and sir, that could not be further from the truth.

Mr. **Kastenmeier**. So that it could not—what?

Dr. **Rostker**. That would not be further from the truth. We have consistently tried to develop procedures which would insure that the rules and regulations and court interpretations are fairly and equitably administered.

Mr. **Kastenmeier**. Now I appreciate that reassurance, Dr. Rostker. As I recall, the Senate either has a proposal before it—I'm not sure whether it's been adopted. I think it has—to the effect that one might indicate his conscientious objector status on the selective service registration form.

I believe Senator Hatfield was successful in getting that done. I don't know whether it will remain as a condition of the appropriation or not. That, I guess, will remain in the future of legislative history.

Will that pose a great problem to you if it were?

Dr. **Rostker**. Sir, we are opposed to that provision because it will trivialize the conscientious objector status. It will open up the door to classification when, in fact, we are not asking for money to classify and have explicitly argued against starting the classifiction process at this point.

Let me explain, if I might.

In an ideal world, we would like to classify and induct on the same day, since the classification really relates to the status of an individual at the time of induction. Under the old system the classification process would begin in an approximate time to a projected induction date. Several months before the projected induction date, an individual was asked to take a physical to determine his physical status. At that point he had the opportunity to apply for various categorizations.

We do not in a peacetime standby mode of selective service have projected induction dates. Therefore, we believe it would be a waste of the taxpayers' money to enter into a classification process that would, in fact, have no value.

If we were forced to classify people as much as 2 years before a possible induction date, the value of that classification could not be sustained.

If a person made application to us as a conscientious objector and that application was denied, 2 years later we in no way would be able to hold that as a firm classification. We would have to readjudicate the claim.

Once we started the massive process of readjudicating claims, we would have the same problems as if we had never classified in the first place.

So our procedures for an emergency induction with the approval of the Congress provides for the ability of an individual to make application over the full range of classifications at the time of induction.

We are concerned that enabling the American people to simply check a box or write a statement on a registration card indicating conscientious objection would be misleading. Only a draft board, duly constituted, could make that determination.

If an individual failed to make that check, no matter what we would say in our own regulations, it may weigh in the minds of the draft board against him when, in fact, he might have a legitimate claim.

And so our consistent policy has been to leave the classification of individuals to the time when it is necessary and not to enter into a political statement on a draft registration card. That does not seem an appropriate place and would, I think, do damage to people's civil liberties further down the road if it ever became necessary to reinstate induction.

Mr. **Kastenmeier.** I'm not sure what the arguments for it were in the Senate. Obviously, several Senators, as of the moment, are persuaded to the contrary. I suppose they would feel that it might tend to sort out the people, before classification and call-up, who probably should be sorted out at some point in time. The earlier this is done, they might feel, the better.

Dr. **Rostker.** Mr. Chairman, that would have no standing in the system. We could not on the basis of simply a check-off grant CO status.

On the other hand, we are afraid that it would mitigate against the proper operation of the system in an orderly fashion.

Mr. **Kastenmeier.** Without being contentious, Dr. Rostker, I would suggest that selective service registration is not trivial. You would be the first to agree, and therefore, a statement made on the form cannot be minimized. That is to say, registrants are either complying or not complying at very great civil and criminal risk to themselves.

Therefore, this must be considered a very, very important duty and an important statement by the individual. I really doubt whether people would consider it trivial. Now some might, but most would feel otherwise.

In any event, I would like to now yield to the gentleman from Illinois, who has been very patient.

Mr. **Railsback.** Dr. Rostker, I don't mean to be contentious and the questions I ask are really for my edification because I am not a member of the Armed Services Committee.

I do remember that there were many Members of Congress that very strongly favored draft registration last year. And I remember that the President at one point last year came out against so-called peacetime registration.

And I also understand that by use of, I believe, the Freedom of Information Act, there were certain statements and recommendations that were elicited. And I think yours, I believe, was one of them.

I would like to begin by asking you, whose statements were sought by the President in formulating his policy decision? In other words, could you kind of give us a rundown?

Dr. **Rostker.** I can only respond from my point of view since I do not know——

Mr. **Railsback.** Are you aware of the materials that were elicited by reason of that Freedom of Information Act request?

Dr. **Rostker.** Yes, I am. But I am not——

Mr. **Railsback.** What were they? We don't have them.

Dr. ROSTKER. I am only knowledgeable from the information we turned over to——

Mr. RAILSBACK. OK.

Dr. ROSTKER. We were working on a draft document that was being presented to an interagency working group charged with preparing responses to a series of questions from Congress.

Mr. RAILSBACK. Who made up that group?

Dr. ROSTKER. Representatives from my agency, Justice, the U.S. Postal Service, HEW, the Labor Department, the Defense Department, and from OMB, who chaired the group.

We were charged with providing the first answers to a number of the questions. We were preparing the options paper for that group.

Those documents were released under the Freedom of Information Act.

Mr. RAILSBACK. Were there actual recommendations made, for instance, by your agency?

Dr. ROSTKER. Yes, there were. Those recommendations were made to the working group, however, not to the President.

Mr. RAILSBACK. What were the recommendations?

Dr. ROSTKER. We did recommend in the draft document, on a very close call with appropriate caveats and considering the international circumstances that we——

Mr. RAILSBACK. I'm not trying to put you on the spot because I'm going to give you a chance to say why circumstances have changed.

Tell me what your recommendations were.

Dr. ROSTKER. The recommendation was for a postmobilization registration.

Mr. RAILSBACK. For what reasons?

Dr. ROSTKER. At that point, we felt that the time delays were not necessarily significant and the difference in cost was not substantial.

Mr. RAILSBACK. And inasmuch as they've apparently been turned over pursuant to the Freedom of Information request, might our subcommittee get a copy of those recommendations?

Dr. ROSTKER. We'll provide the full draft report.

[Information is printed in app. 2 at p. 168.]

Mr. RAILSBACK. All right, do you regard yourself as a policymaker in the area of selective service, as far as draft and registration? Are you one of the policymakers?

Dr. ROSTKER. My tasking is to build the system to the extent that there's policy involved, there I am a policymaker. But I am not a free actor in that system.

Mr. RAILSBACK. In other words, you're one of the actors, but you have to interact. Is that right?

Dr. ROSTKER. Precisely, sir.

Mr. RAILSBACK. Let me ask you this, for we are very much concerned about the severity of the sentences and the punishment under current law.

What's your view about having a felony offense for failure to register or failure to provide a new address in the event of a change of address? Do you think that that should be a felony offense?

Dr. ROSTKER. Yes, I do.

Mr. RAILSBACK. All right, now you can tell us why?

Dr. **Rostker.** I think it's very serious. I think whenever the country asks its citizens to make themselves available for military service in an involuntary manner, it is very serious. It should be done with the utmost fairness and justice. I think that that requires every citizen to assume his fair share consistent with his conscience.

Mr. **Railsback.** What should be the standard or the state of mind of the individual in order for that individual to be convicted? Should he have to have knowledge, should it be done knowingly? In other words, we're very much concerned about the standard for I understand that the vast majority of cases for selective service violations, back in 1977 resulted in acquittals.

I guess what I'm asking is, would you favor that the law require that there be actual knowledge or a specific intent to fail to register or supply a change of address? Would you favor that standard?

Mr. **Rostker.** Sir, I think the Government has a responsibility to make a reasonable attempt to let people know what their legal rights are. I do not favor a standard personally.

Mr. **Railsback.** But say they do that. Say they publish the rele. ant information, but some individual raises the defense that they really didnt' know that they were supposed to register or provide a change of address. Should that person be prosecuted for a felony?

Dr. **Rostker.** I think that person would be in a position to make the record whole. If he consistently refused to comply, he certainly should be punishable under a felony. I think that there's an obligation on both the part of the citizenry, as well as the Government, to try to have fair lines of communication.

I do not think that it's reasonable for the Government to have to prove in every instance that an individual did not know his responsibility. If he is in a major metropolitan area at the time of the registration and has access to radio, television, print medi.., and the Government makes every attempt to communicate with the individual, I think the presumption should be that those communications were successful.

Mr. **Railsback.** You know what it appears to me is that ignorance of the law is no excuse. But you're saying one additional thing—that the Government ought to make a very dedicated and sincere effort to see that the law is known.

Mr. **Rostker.** That's correct, sir.

Mr. **Railsback.** But you do not favor, even in respect to prosecution for the commission of a felony offense, that there be actual knowledge or proof of intent.

Dr. **Rostker.** That's correct, sir.

Mr. **Railsback.** What about sentencing disparity? Would you favor any kind of gradations as far as relative sentencing, depending upon intent or mitigating circumstances? What's your feeling about that?

Dr. **Rostker.** I'm certainly not a lawyer. I think that——

Mr. **Railsback.** But you are one of the policymakers.

Dr. **Rostker.** I don't make policy for the Justice Department or for the courts as far as sentencing is concerned.

Mr. **Railsback.** Well, what's your own view about it?

Mr. **Rostker.** My own view is that the judge should have some flexibility regarding mitigating circumstances.

But if I may, I want to make it quite clear that you're addresing areas in which, as a policy official, I do not delve. These are areas outside of the purview of the Selective Service System and outside of my competence to provide any position.

Mr. **Railsback**. But, clearly, your views were sought last year when the President wanted to take a position on registration. And I'm sure you're one of the principal ones involved in having an input. So I think your views are very important.

Do you think the selective service will, or the administration will, seek an exemption under the Privacy Act? I didn't quite understand your response.

Dr. **Rostker**. I do not rule it out.

Mr. **Railsback**. And in respect to what agencies would you like to see an exemption? With the IRS?

Dr. **Rostker**. IRS and Social Security.

Mr. **Railsback**. All right, now, how have circumstances changed since last year when you submitted your recommendations? How have they changed, in your view, to provoke the President, and apparently, yourself, into reversing your position?

Dr. **Rostker**. As I indicated, it was a very close call. In our draft report we specified that the decision had to be made on broader grounds than just technical feasibility, such as the international situation.

Mr. **Railsback**. I would ask you to be a little more specific there, are we sending a message on account of Afghanistan?

Dr. **Rostker**. No; I think the world is clearly a more dangerous place today then it was 6 months ago or a year ago. I think it is prudent for people to assume different levels of preparedness as the situation changes. For what I believe to be a very small sum of money and no great intrusion on individual liberties, we can substantially improve our response capability. We can have the certainty that goes with an ongoing system instead of the uncertainty inherent in any contingency plan.

And so, given the world situation today, I fully support the proposal for peacetime registration.

Mr. **Railsback**. Can I ask you this? From a procedural standpoint, how have your views changed as far as the timing once the registration mechanism is put into place? Have you had a change in your feelings about how much more time would be involved in order to begin registration?

Is it still a relatively short time, in your view, once you have the mechanism in place to begin registration?

Dr. **Rostker**. I would think that we are talking about a period of 2½ to 3 weeks, rather than the 1 week differential that was previously discussed. We have gained a great deal of experience in the last 6 months in working through a number of these procedures. For example, I think an orderly process that would provide more time for notification of the registration in an appropriate public affairs program is more important than I may have thought in the past.

Mr. **Railsback**. So rather than the 7 days that we hear about, you're saying now it would take longer, even with the machine in place?

Dr. **Rostker**. Yes, and I so indicated——

Mr. **Railsback**. But 2½ weeks, it would take 2½ weeks?

Dr. **Rostker.** To adequately carry out the registration and then process the data so that we could institute induction consistent with the rules of the agency and the law, it would probably take on the order of 2½ to 3 weeks longer than what we originally projected.

Mr. **Railsback.** So, and this is my last question your feeling is that you support the idea of registration. You support the recommended sentence standard, which is, as I understand it, a felony offense up to 5 years?

Dr. **Rostker.** I should point out, Mr. Chairman that this is a serious crime. I think a person who fails to register, in effect, is saying—without using the system's procedures—I don't want to go. I don't want to participate. Let somebody else go for me.

We are prepared to guarantee through our procedures the protection of his rights to claim conscientious objector status at an appropriate time. If he doesn't register, he doesn't even give us a chance to do that. He simply says, I want out. Let somebody else go for me.

I think that that is a very serious, serious circumstance.

Mr. **Railsback.** I think that I've used up my 5 minutes, Mr. Chairman.

Mr. **Kastenmeier.** The gentleman from Michigan, Mr. Sawyer?

Mr. **Sawyer.** Back when I was wrestling, trying to decide how I was going to vote on the registration issue, I talked to a number of people, including your agency. It was never clear to me then, and I have to admit it still isn't clear to me, how you gain any time advantage with this registration that you're talking about calling merely for names and addresses.

It might be that before you do anything with it, you're going to have to call the people back in for the purposes of making those determinations.

Why couldn't that all be done at once?

Dr. **Rostker.** The problem is that the determination that you are talking about change with time, they're not static. And the problem is that today, in a standby system, we do not have projected induction dates. So even if we had gone through a massive program of classifying, giving physical exams and the like, most of that information would be suspect and would have to be redone. The Army for example, only recognizes the utility of the physical exam for one year.

Mr. **Sawyer.** You're going backward now. I'm saying supposing we didn't have a preregistration like we have now. Suppose that we decide that we need a draft now. Couldn't you just as easily do what you're doing now and get the rest of the information you need all at once because you'll have to go back to that list anyway and have them all come in?

Dr. **Rostker.** Absolutely not. In the scenario that you're talking about, we would have to activate our whole registration structure, publicize the registration, distribute the material, conduct the registration, move the data back to the central points for processing, and process the data.

All of those actions would be done in peacetime under our present proposal. This would be a long and drawnout process, even with modern data processing equipment.

Under the provisions of our agency, we would then take the registration information and start in an appropriate fashion ordering people for induction, at the same time giving them the opportunity to make a claim for deferral or exemption.

All we have done in our proposal is to save 3 to 4 weeks of processing by completing the registration in peacetime so that we can start the induction and classification process in an orderly way.

There's no question that we would be doing many, many more things in the turmoil of mobilization if we don't accomplish these tasks in peacetime.

Mr. Sawyer. That's all I have. Thank you.

Mr. Kastenmeier. Does the gentleman from Illinois have any other questions?

Mr. Railsback. I only wanted to ask, have there been samplings or surveys commissioned by your office as far as potential compliance or noncompliance? I understand that there have been some surveys.

Dr. Rostker. Not by my office.

Mr. Railsback. Do you favor including women?

Dr. Rostker. Yes, I do, and it has been the position of this administration.

Mr. Railsback. Has anything been done in respect to the McCloskey bill that would provide other kinds of alternate service?

Dr. Rostker. Not specifically. We are in the process of developing a program of alternate service, since it is the responsibility of this agency. If we ever go to induction, it would be a program that we would have to activate in the same time frame.

We've had discussions with the Department of Labor and with other organizations. But the contact has been very, very preliminary.

Mr. Railsback. So you haven't really taken any sampling. Why hasn't Selective Service tried to determine the potential compliance or noncompliance?

Dr. Rostker. Because we believe that the requirement to do what we are asking funds for rests upon military preparedness and the ability of our Nation to respond to a military emergency.

Mr. Railsback. I know that. But, given the fact that there are some that think there would be a very heavy incidence of noncompliance, why haven't we tried to determine that?

Dr. Rostker. Because, as far as we're concerned, it's really nonoperational. We will know once we have the registration whether we have a severe problem and there will be ample opportunity to address those problems.

There's very little that I could do with information one way or the other. Consistently survey data of this and other types does not necessarily impact on the way people will actually behave.

If you ask an individual if he will vote the answer you're likely to get is a political statement not in fact what his behavior will be when faced with the real problem.

And so we think it could be very misleading. I think the proof of the pudding is the registration itself.

Mr. Railsback. OK, thank you.

Mr. Kastenmeier. Dr. Rostker, on behalf of the committee, I want to thank you for your appearance today. You've been very forthcoming in response to a number of our questions. And on behalf of the committee, I would like to say we look forward to working with you in the

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future on this, along with our other sister committees that have other responsibilities, as it appears that we are entering into a period where this will increasingly be a public issue and a public problem.

Thank you, sir.

Dr. **Rostker.** If I may, I want to assure the committee of the seriousness with which we approach these problems. As I said before, I do not take lightly the call of duly constituted authority for a person to serve. We have an obligation to the Congress and, more importantly, to the American people, that that system be above reproach, that it be guided in law and that it be unbiased. Everything we will do will strive for the fair and equitable treatment of American citizens.

Mr. **Kastenmeier.** Thank you, Dr. Rostker.

The committee will stand recessed again for 10 minutes, since there is a vote on, at which time we will hear from Rev. Barry Lynn and Mr. David Landau.

The subcommittee stands in recess.

[Recess.]

Mr. **Kastenmeier.** The committee will reconvene.

We now have a panel of witnesses who represent the Committee Against Registration and the Draft and the American Civil Liberties Union.

Rev. Barry W. Lynn chairs CARD, which is a national coalition of 49 peace, religious, women's, students' and civil rights organizations. Reverend Lynn is a member of the District of Columbia Bar. He is also an ordained minister and serves as legislative counsel for the Office for Church and Society of the United Church of Christ.

David Landau is staff counsel for the American Civil Liberties Union Washington office. He's nationally recognized for his expertise in selective service law and he's well qualified to speak for his organization's 200,000 members.

He is also a cochair of the Committee Against Registration and the Draft.

Reverend Lynn and Mr. Landau, welcome. You may proceed as you wish.

TESTIMONY OF REV. BARRY LYNN AND DAVID LANDAU, COALITION AGAINST THE DRAFT AND REGISTRATION

Mr. **Lynn.** Thank you. I would like to just summarize my statement.

I am not here this afternoon to advocate nonregistration for the draft. However, I do believe that historical evidence, combined with present planning realities, suggest that sizable nonregistration will occur.

We've just heard that the administration does not want to believe this and therefore, is doing very little to prepare for it. Dr. Rostker has indicated in other public testimony that a 98 percent compliance would be expected. But each percentage point, each 1 percent of those who fail to register this summer constitute 40,000 potential felons who face up to 5 years in a Federal penitentiary.

Frankly, I believe that the available evidence indicates that Dr. Rostker's 98 percent registration rate is in the realm of fantasy. The last peacetime registration similar to that proposed for this summer occurred between January of 1973 and March of 1975. Available data from three sources suggests sizable noncompliance and late compliance with the registration law.

First, I have compiled a statistical analysis for 1973 and 1974 comparing the number of Selective Service registrants with the number of persons eligible for registration. There is a sizable discrepancy in both years amounting to over 200,000 persons in each year, over 10 percent of those eligible.

The second source of data are law enforcement records. In all of 1972, there were 856 referrals by Selective Service to U.S. attorneys specifically for failure to register. During 1973, that number grew precipitously to nearly 3,500 individuals reported for late or nonregistration, a 408 percent increase.

It is obvious to me that nearly 3,500 referrals in 1973 alone represents a sizable law enforcement problem. There's every reason to believe that this is merely the tip of a mammoth iceberg of late and nonregistration, since locating nonregistrants has always been a formidable task.

Finally, there is anecdotal evidence. Although the present selective service bureaucracy may facilely claim that nonregistration is not a problem, many of their precedessors were somewhat more candid. I have concluded in my testimony statements from former director Byron Pepitone affirming widespread registration problems in 1973 and 1974.

There's a final bit of anecdotal evidence to support the problem of registration in peacetime. It is the record in the case of the United States versus Boucher. The defendant in this late registration case had registered 7½ months late. His counsel, however, had examined the records of the defendant's local draft board between 1973 and April of 1974. He discovered that of the 76 registrants, 100 percent had registered late and 60 percent had registered as late or later than his client's 7½ month tardiness.

One can only guess at the numbers in that board who did not register at all.

I think it's realistic to expect that this summer we could find, as the Congressional Budget Office suggests, that 100,000 to 250,000 men will fail to register on time or at all.

In fact, in spite of all this historical evidence, I think there are many good reasons to believe that nonregistration will become a more serious problem now than it was in 1973. First, draft registration is no longer viewed as a normal part of the entrance into adulthood. There is no consciousness among most 19- and 20-year-olds about the registration process.

The fiscal 1980 supplemental appropriation contains, at most, only $400,000 for all publicity related to this new legal obligation.

I think that is an irresponsibly pitiable effort at public relations. Maybe the administration believes that the press will advertise its program for it, but that is usually a dangerous and unworkable assumption.

Also, registration during summer of the most mobile age group in the months of their greatest mobility strikes me as terrible planning on its face. I certainly hope that some of the money being used for publicity is being planned to be used for the printing of maps of how you get to the post office in Atlantic City, New Jersey, or Daytona Beach, Fla., because that's where these mobile young people are going to be this summer.

The second reason for increased nonregistration is the sense that the sex and age discrimination in this proposal, males only born in 1960 and 1961, is so discriminatory on its face that it creates the kind of resentment which will lead to greater nonregistration.

Third, the length of time it's taken to progress this far toward registration shows significant public and congressional hostility to the proposal. It has been 4 months since the state and the Union address. The House passed the funding of registration by only a 30-vote margin. Major political figures, including Senator Kennedy, Congressman Anderson, Governor Reagan, and former President Gerald Ford have openly expressed their strong disapproval of registration.

All this is not lost on the potential registrants. President Carter is isolated and lacks the solid support needed to give registration an air of moral and social legitimacy.

A fourth reason for increased nonregistration is the reluctance of the administration to deal sensibly with conscientious objection. I cannot believe some of the comments that were just made by Dr. Rostker. He suggests that Senator Hatfield's amendment to permit a checkoff at the option of the registrant to state conscientious objection is somehow trivializing CO status.

That is absolutely incorrect.

A checkoff is a symbolic statement of religious intention and President Carter, I would hope, would understand something both about religion and about symbolism. It is not a move to classification. Classification is an administrative act, not a symbolic religious statement.

Finally, Dr. Rostker's statement that somehow if a person did not check off the box, then draft boards might hold it against the applicant later, in spite of selective service regulations, suggests to me that Dr. Rostker does not believe that the local draft boards now, any more than in the past, will respect the laws and the regulations of that agency, and that frightens me a great deal.

There are just a few other things I'd like to say. I think that the Department of Justice and the Selective Service owe the country a more square and honest discussion than we heard earlier today about the question of the use of social security records for tracking down those who do not register.

I think that there needs to be a tremendous clarification of the issue of nonwillful failure to register. The eighth circuit decision of *Klotz v. the United States* holds that to establish failure to register, the Government must prove that the defendant knew of his obligation under the act.

I think that is good law.

The case indicates that a generalized showing that information about a registration requirement was publicized, coupled with the presumption of knowledge by the defendant, is insufficient to establish the culpable criminal intent necessary to sustain a conviction. Particularly in light of 5 years of no registration in the United

States, it would seem wholly appropriate for the Justice Department to hold to the *Klotz* standard.

But then, today, we learn that Dr. Rostker himself, at least, believes that there should be a presumption of knowledge and apparently plans to prosecute those who, in his judgment, or the judgment of the Department of Justice, ought to have read the newspapers and learned of this requirement.

I'm terribly troubled by the lack of an overall prosecutorial policy by the administration at this late date, when they are planning registration for next month. I just fear that we are on the road once again to step after step of highly discretionary justice at every stage in these proceedings.

Much of what I said today is based on historical assumptions and my own views based on travels around the country. The acid test of peacetime registration comes, if at all, this summer if the Senate funds the proposal.

I've done a few calculations. It appears to me that there are 1.9 million 20-year-olds and another 1.9 million 19-year-olds who will be required to register.

So if registration occurs in July, there are 3.8 million men out there who are supposed to trudge off to the post offices and register. Frankly, I don't think that President Carter could get 3.8 million men in peacetime to register for his symbolic charade if he handed out a gold bar to everyone as they stepped up to the post office window.

We are headed for a national nightmare of law enforcement problems, of social upheaval, of intergenerational warfare. I just wish that the President and the administration had given a lot more thought to all of the social ramifications before they proposed this in the State of the Union address.

Mr. Landau, I believe, also would like to summarize his written statement.

[The statement of Reverend Lynn follows:]

STATEMENT OF BARRY W. LYNN[1]

Mr. Kastenmeier and members of the subcommittee, my name is Barry W. Lynn. I appreciate the opportunity to convey my views to this committee. Currently, I am serving as legislative counsel for the Office for Church in Society of the United Church of Christ. I am an ordained minister in the United Church of Christ and a member of the District of Columbia bar. I do not claim to speak for all members of this denomination, but our most respresentative body, the General Synod, has consistently reaffirmed (most recently in 1979) opposition to peacetime draft registration. I also chair the Committee Against Registration and the Draft (CARD), the national anti-registration coalition which now contains 49 peace, religious, womens', student, and civil rights organizations. I have been working actively in the areas of Selective Service, military and veterans benefit law for the past six years.

I

Your subcommittee provides an excellent forum for discussion of the vital issue of the impact of renewed draft registration on the entire legal process. So far, the debate on President Carter's proposal to register 19 and 20 year old men for the draft this summer has focused largely on questions of the adequacy of the symbolic impact of registration and the military preparedness, if any, actually gained by registration. Important as these issues are, a decision to fund registration should also be evaluated in terms of its potentially devisive social impact. If resistance to registration is high and the country is bitterly divided, any marginal symbolic value of the act will be eviscerated.

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[1] Mr. Lynn serves as legislative counsel for the Office for Church in Society, United Church of Christ. He also chairs the Committee Against Registration and the Draft (CARD), a national coalition of 49 peace, religious, women's, student, and civil rights organizations.

I am not here this afternoon to advocate non-registration for the draft. However, I believe that historical evidence combined with present planning realities suggest that sizeable nonregistration will occur. The Administration seemingly does not want to believe this, and is therefore doing little to prepare for it.

Somewhat typical of Administration responses on the issue of registration law violations is that of Mr. John White, Deputy Director of the Office of Management and Budget, before the Senate Appropriations Subcommittee on HUD and Independent Agencies on March 11, 1980. Mr. White noted: "I do not think it will be an issue. I think young people will register as they have always in the past. I don't think it is a problem."

Dr. Bernard Rostker has indicated in other testimony that a 98-percent compliance could be expected, although this position is a considerable revision from the document he prepared on January 16, 1980, "Improving Capability to Mobilize Military Manpower," in which he indicated only that "a face-to-face registration will provide a list of over 90 percent complete . . ." Each percentage point makes a large difference, of course, in law enforcement costs and attendant problems. For every 1 percent of the nearly 4 million 19 and 20 year old men who fail to register this summer, we are creating 40,000 potential felons. If 98 percent do register, as Dr. Rostker now seems to suggest, there are still 80,000 men who do not. Each one who does not faces a Draconian sentence of up to five years in the Federal penitentiary and a $10,000 fine.

Frankly, I believe that available evidence shows Mr. Rostker's 98 percent registration rate to be in the realm of fantasy. The last "peacetime registration" similar to that proposed for this summer occurred between January of 1973 and March of 1975, a period in which there were no inductions, but a continuing legal requirement of registration. This period has not been extensively reviewed by historians. But available data suggests sizeable noncompliance and late compliance with the registration law. There are three indicia of the magnitude of the problem I would like to examine: statistical data, prosecutorial data, and anecdotal evidence.

The statistical case

I have compiled a statistical analysis for 1973 and 1974 comparing the number of Selective Service registrants with the number of persons eligible for registration. There is a sizeable discrepancy in both years.

1974:	
Live male births, 1956	2,133,588
Resident aliens subject to draft	+46,000
	2,179,588
Deaths 0–18 years (36.5/1,000 births)	−77,876
Persons in military service by age 18 or institutionalized and unavailable for service	−75,000
Potential registrants	2,026,712
Actual registrants by March 1975 for year of birth 1956	−1,823,852
Unaccounted	207,860
1973:	
Live male births, 1955	2,073,719
Resident aliens, age 18	+46,000
	2,119,719
Deaths 0–18 years (36.5/1,000 births)	−75,691
Persons in military service by age 18 or institutionalized and unavailable for service	−75,000
Potential registrants	1,969,028
Actual registrants by March 1974 for year of birth 1955	−1,756,469
Unaccounted	212,559

This statistical comparison confirms that approximately 10 percent of all eligible males did not register as required by law during the last peacetime registration period. These figures alone of course do not indicate the number of persons, who, although ultimately registering within 3 months of the end of the calendar year, registered later than 30 days after their 18th birthday which the statute permitted. Late registration, of course, also poses a law enforcement problem. Since the proposed registration this summer will not be continuous, as in 1973–75, but will occur only during a one-week period for each age group, late registration will be much more difficult, if not impossible, to accomplish.

I am aware that Selective Service has submitted a table of statistics to the Armed Services Committee which purports to show that during the Vietnam-era and the peacetime registration period, virtually every eligible person registered. Two comments must be made. First, I have never been able to get Selective Service to delineate precisely how their "population base" is derived. Since in 1965, for example, they claimed to have registered 110.8 percent of eligible males, it is obvious that either (a) Selective Service learned to clone 18 year olds or (b) their population base grossly underestimated the actual number of 18 year old males. Second, for the "peacetime" period, they admit that it took some persons who were required to register early in 1973 until March of 1975 to do so. After 15 months of registration of 1955 Year of Birth males, according to their statistics, only 92.3 percent had registered. Similarly, after 15 months of registration of 1956 Year of Birth males, only 93.6 percent had registered. It appears that their own data documents both the invalidity of their population bases and the reality of both serious late registration and nonregistration problems.

The law enforcement case

Prior to October of 1971 the Selective Service System never kept official records of the type of violations of the statute it forwarded to the Department of Justice. In all of 1972, there were 856 referrals by Selective Service to U.S. Attorneys for failure to register, with an unknown number never reaching the stage of formal prosecution. During 1973, the number grew precipitously to 3,492 individuals reported for late or non-registration. This is a 408 percent rise. (Congressman James Weaver requested from both Selective Service and the Department of Justice a report on the disposition of these cases, and statistics on cases initiated in 1974 and 1975. A letter from Assistant Attorney General Philip B. Heymann indicated that no information on these matters is retained by either agency.)

One major cause for this increase is that "voluntary" enlistment into the military was no longer permitted as a pre-trial diversion for non-registrants because of a change in Defense Department regulations. (See also "United States Attorney's Manual," Directive 9–2.021.) Any kind of compelled enlistment was felt to taint the character of the All Volunteer Force (AVF).

Due to the method of recordkeeping of Selective Service violations by both Selective Service and the Justice Department prior to 1971, of course, we do not know what the level of prosecutions for registration offenses alone actually was. Nevertheless, it is obvious that nearly 3500 referrals in 1973 alone represents a sizeable law enforcement issue. There is every reason to believe that this is merely the tip of a mammoth iceberg of late and nonregistration, since locating nonregistrants is known to be a formidable task.

The anecdotal case

Although the present Selective Service bureaucracy may facilely claim that non-registration is not a problem, many of their predecessors were somewhat more candid. The following excerpts of statements made by Selective Service officials in the early 1970s is illustrative:

SSS Director Byron V. Pepitone: "We know it's [non-registration rate] higher than last year" (June 14, 1973 interview with Associated Press.)

Director Pepitone: "Due to the termination of inductions under the Military Selective Service Act and the attendant publicity, many young men were either not registering or were registering late, in violation of the Law." (Semi-Annual Report of the Director of SSS July 1, 1973-December 31, 1973, p. 5.)

"During the period of this report, statistical data indicate that nearly one-fifth of all registrants are over 60 days late." (Semi-Annual Report July 1, 1974–December 31, 1974, p. 3.)

In fact there is a kind of refreshing honesty to Mr. Pepitone's answer to a question posed at a House Appropriations Committee hearing in April 1975:

Mr. BOLAND: Do you have any idea on how many reach the age of 18 but fail to register?

Mr. PEPITONE: The number who reach the age of 18 and fail to register, I do not know.

All that this seems to indicate is that Selective Service admitted that there was a nonregistration and late registration problem, but by 1975 they had not figured out the magnitude of that problem. It is clear to me that they have still not figured it out.

There is one other bit of anecdotal evidence that supports the thesis of a serious nonregistration problem. It is the record of *U.S.* v. *Boucher* 509 F. 2nd 1102 (8th Cir. 1975). The defendant in this late registration prosecution had registered 7½ months late. Counsel had, however, examined the records of the defendant's local draft board between March 1973 and April 1974. He discovered that, of the 76 registrants, 100 percent had registered late and that over 60 percent had registered as late or later than this client. One can only guess at the numbers who did not register at all with that draft board.

In conclusion of this part of my discussion, I feel that the magnitude of late and nonregistration can be expected to be very high. The Congressional Budget Office estimate in 1978 which indicated that between 100,000 and 250,000 men from any age group would fail to register on time or at all seems to be much more realistic than Dr. Rostker's recent projections.

II

There are also substantial reasons why non-registration is likely to be higher now than in 1973, 1974, and 1975:

(1) Draft registration is no longer viewed as a normal part of the entrance into adulthood. There is no consciousness among most 19 and 20 year olds about the registration process, and the Administration seems to be taking great pains not to explain exactly what they have in mind. The fiscal year 1980 Supplemental Appropriation contains at most only $400,000 for all publicity related to this new legal obligation. This is a pitiable effort which represents irresponsible planning. The Administration even opposed efforts last week in the Senate Appropriations Committee to increase spending for advertising their program.

I assume that the Administration thinks it can rely on the press to do its advertising. This is usually a great fallacy. This subcommittee is well aware of the record of President Ford's Clemency Board which attracted only a handful of eligibles, in part because there was no real commitment to publicizing the program. President Carter should also be aware of the abysmal record of his Special Discharge Review Program for Vietnam-era veterans which attracted less than 9 percent of those eligible.

The fact that Selective Service has still not set the weeks for registration will also make successful registration more difficult. Obviously, to some extent, the weeks for registration—if any—depend on when, if ever, the Senate votes for funding. However, since Selective Service is already doing printing and planning for registration it should also frankly tell us when they want registration to occur if the funding comes through next month.

I suspect I know why the Administration initially chose to register in June or July. They avoid turmoil in August at the time of the Democratic National Convention and the greater turmoil of waiting until September when the college campuses are lively once again. However, these considerations aside, registering the most mobile age group in the months of their greatest mobility seems to be terrible planing on its face. I certainly hope some of the publicity money is going to printing maps of how to get to the post offices in Atlantic City and Daytona Beach.

(2) It is now clear that any registration will be of men only, and only of men born in 1960 and 1961. This is so grossly discriminatory by sex and age that enormous resentment is building up among that very select sample of men who are having new duties imposed upon them. This resentment will increase non-registration.

(3) The length of time it has taken to progress this far toward registration shows significant hostility to this proposal. It has been four months since the "State of the Union" address in which the President first proposed registra-

tion. The House passed the funding of registration by only a 30 vote margin. Major political figures including Senator Edward Kennedy, Congressman John B. Anderson, Governor Ronald Reagan, and former president Gerald R. Ford have openly expressed their strong disapproval of the registration plan. All this is not lost on the potential registrants. President Carter is isolated and lacks the solid support needed to give registration an air of moral and social legitimacy.

(4) I must presume that the Administration will continue to affirmatively oppose the amendment successfully added by Senator Mark O. Hatfield to H.J. Res. 521 which requires that registration forms contain an optional question concerning the registrant's interest in claiming conscientious objector status. Should this amendment be removed on the Senate floor I would anticipate greater problems of non-compliance by religiously motivated individuals.

Many persons, particularly from the so-called "historic peace churches", were willing to register with Selective Service during the Vietnam period because they understood that within a few days of registration they would receive Form 150 in which they could request C.O. status. The release of the Gurwitz memorandum, which suggests possible rescission of the C.O. exemption, followed by the abject failure of the Administration to convincingly repudiate the Gurwitz document, followed by the open Administration lobbying against the Hatfield amendment leads many of us to believe that the new Selective Service regime will be extremely hostile to claims of conscience. I do find many persons who claim that if they cannot, in some fashion, "register" their intention to be a C.O., they will not register with Selective Service at all.

(5) Organized efforts are being undertaken by some groups to urge non-registration. One such group, the Students for a Libertarian Society (SLS), has indicated in Senate testimony that it "intends to destroy any registration system . . . The government will have to begin from a base of zero registrants. Unlike previous registration, any moves by the government will be countered by a dedicated, knowledgeable, and well-established organization of people who will refuse to register and who will urge others not to sign their lives away." I am convinced that this is not merely idle rhetoric.

III

The Director of Selective Service has made it clear that the Administration does plan to enforce any registration requirement. The first step to enforcement, obviously, is to locate those persons who may have violated the law. I believe the country would be well served if the following issues were squarely and honestly addressed by both Selective Service and the Department of Justice:

(1) Use of Social Security Administration and Internal Revenue Service data base—The President's February 11, 1980 Report on Selective Service, President's Recommendations for Selective Service Reform notes that the Social Security Administration's computers contain "the most comprehensive data base available" (except for current addresses) and that the I.R.S. has the best list of current addresses. Initial processing of registrants will use S.S.A. computer facilities, but no reference is made to the data bases themselves.

The already-printed registration forms, however, contain a space for one's Social Security number. Initial press statements by the Administration had indicated that disclosure of Social Security numbers would be optional under the registration program. It is now, however, cleraly mandatory. This leads me to strongly suspect that plans are being made to cross-check draft registrants against lists of 19 and 20 year old contributors to the Social Security program by using those Social Security numbers listed on the registration forms. Dr. Rostker indicated in a recent radio interveiw (Pacifica Radio Network, May 6, 1980) that: "If they feel for whatever reason, that there are people getting a free ride because of the technicalities in the Privacy Act, my personal view would not go to increasing the Privacy Act but moving against it to strike it down on those specific instances and provide for more direct access to federal files."

(2) *Use of census data.*—On March 11, 1980, Dr. John White, testifying before a Senate Appropriations Subcommittee indicated: "Finally, at the time of registration, because of the data base with respect to census and others, we can have a good sense of whether or not we have a problem with respect to the number of people not registered." I wrote to Mr. Vincent P. Barabba, Director of the Census

Bureau, asking him to clarify Mr. White's statement. I also specifically urged that the Administration "reject as a matter of policy any statistical comparisons of census and draft registration data for the purpose of targeting for investigation those neighborhoods where less than expected registration may occur." I eventually received a reply from Mr. Barabba which was at least as cryptic as Mr. White's initial statement. He indicated that "small-area data" will be published but could be quickly out of date for the registration age group, and concluded that he "would expect that any uses of census data in connection with the draft registration would be done in a broad manner not unlike the uses described" in the booklet "Summary Descriptions of Data Use for Questions Planned for Inclusion in the 1980 Census". I do not believe this is an adequate answer to whether data about neighborhoods will or will not be used to locate areas of greatest nonregistration.

(3) *Other policies to locate nonregistrants.*—Much as I would oppose the use of Social Security numbers or the census for law enforcement purposes, such uses have the one meritorious feature of relative consistency. The alternatives are replete with haphazard attempts to locate nonregistrants through such esoteric channels as high school yearbooks, peer group informants, and other forms of surveillance. This is only likely to occur in some areas, of course, with particularly zealous prosecutors. I cannot imagine registration being viewed as a high priority when compared to arson-for-hire, kidnapping, or even immigration offenses.

(5) *Nonwillful failure to register.*—The Department of Justice should be willing to take a position on nonwillful failure to register. In the past, the government has sometimes asserted that it need only show that general publicity was given to the registration requirement and that a particular defendant did not register, in order to successfully prosecute that nonregistrant. Most courts have not concurred. The most significant decision is *Klotz* v. *U.S.* 500 F. 2d 580 (8th Cir. 1974), rehearing denied 503 F. 2d 1056. It holds that to establish failure to register under 50 U.S.C. App. § 462, the government must prove that the defendant knew of his obligation under the Act. The case indicates that a generalized showing that information about the registration requirement was publicized, coupled with a presumption of knowledge by the defendant, is insufficient to establish the culpable criminal intent necessary to sustain a conviction. Particularly in light of five years of no registration in the United States, it would seem wholly appropriate for the Justice Department of hold to the *Klotz* standard.

(6) *Overall prosecutorial policy.*—Closely tied to the methods in which nonregistrants may be located is the Administration's overall prosecutorial policy. They have done nothing to suggest any interest in reducing the present penalties in time for the summer's proposed registration. Several officials of Selective Service have indicated to me and to other anti-draft groups that a policy calling for less severe sanctions "might" be adopted by the Justice Department. I am afraid that they have the dangerously naive view that "informal" Justice Department guidelines are always carefully followed by U.S. attorneys and even by Federal judges. Dr. Rostker told the Board of the National Interreligious Service Board for Conscientious Objectors last February 28 about his hope for penalties: "I would hope that the Federal attorneys would have the courts direct that the individual go down and register." It is ludicrous to suggest that one would go through the entire costly Federal judicial process just to have a judge order a person to do that for which he was being prosecuted for not having done. Such naivete is genuinely dangerous to the functioning of our administrative and judicial systems.

I fear we are on the road again to step after step of highly discretionary justice. In areas where anti-draft sentiment is high, conviction rates and length of sentences will be low. See Judicial Authority and Public Attitude: A Quantitative Study of Selective Service Sentencing in the Vietnam War Period, 23 Buffalo L. Rev. 465–498 (1974). I am sure that we will see repeats of disparate sentencing practices as well. It is worth recalling, for example, that between 1969–73, judges in the Western district of Oklahoma sent 90.4 percent of convicted draft law violators to prison and judges in New Jersey sent 8.4 percent to prison.

This discretionary justice ill serves the legal system and helps generate and perpetuate disrespect for the judicial process.

IV: CONCLUSION

The acid test of peacetime registration, of course, may only come this summer. I have done a few calculations on the numbers of persons who are eligible. One age group to be registered is 20 year olds, those born in 1960:

Male births, 1960	2,179,7
Resident aliens, 20 years old	+46,000
	2,225,7
20 years olds already in service	−226,80
20 year olds institutionalized	−10,000
Males born in 1960 who have died (33.2/1,000 births)	−72,3
Registrant pool	1,916,542

Another 1.9 million 19 year olds will also be required to register. So if registration occurs in July, there are 3.8 million men out there who are supposed to trudge off to the post office. Frankly, I do not think you could get nearly 4 million men in peacetime to register for a symbolic charade if you promised to give them a gold brick when they did it.

Mr. **Kastenmeier**. May I say, let me compliment you on your statement, Mr. Lynn. The Chair is going to have to take a 5-minute recess because there's another vote. And I hope to return with other members of the subcomimttee. We appreciate your patience. We'll then turn to Mr. Landau.

The committee will be recessed for 5 minutes.

[Recess.]

Mr. **Kastenmeier**. The committee will come to order.

Now we would be pleased to hear from Mr. David Landau.

Mr. **Landau**. Thank you, Mr. Chairman.

Before I summarize my statement, I would, on behalf of the ACLU, like to thank you for your outstanding leadership in this area and particularly for your efforts yesterday in the Judiciary Committee when the committee successfully adopted an amendment to reduce the penalties for nonregistration during peacetime.

We were disappointed, as I'm sure you were, that the other amendment on culpability did not pass, and I will discuss that amendment and the importance of that amendment somewhat later in my statement.

Mr. Chairman, no one can predict the precise reactions to and impact of draft registration. However, we do have the very recent and painful experience with an active Selective Service System during peacetime. The draft, in the absence of a recognized imminent threat to the Nation, was resisted, avoided, and evaded.

Some chose jail, others exile. Citizens became contemptuous of the Government. During the Vietnam war, antidraft activity became one of the principal excuses for widespread political surveillance and disruption programs. The CIA monitored movements of antidraft activities, burglarized homes, eavesdropped on conversations, bugged telephones.

The Department of Justice provided lists of names to the CIA for these purposes. The FBI, which has jurisdiction to investigate criminal violations of the draft laws, infiltrated and disrupted antidraft and antiwar groups. Almost every member of the Committee Against Registration and the draft, including the ACLU, was at one time or another targeted for surveillance by the FBI.

Even the Army engaged in surveillance of domestic political activity. The powers that were intended to weed out saboteurs, espionage agents, and criminals were directed at antidraft activities. If these powers remain unchecked, as they have been for the last 30 years, law enforcement and intelligence systems have a tendency to operate outside the Constitution and thereby stifling dissent.

There are some who are convinced that this type of lawless Government activity is not likely to occur again. The ACLU believes that since draft registration is by its very nature a massive Government surveillance system, it will inevitably lead to Government infringement of civil liberties.

By 1985, all young people ages 18 to 26 years old will be under a legal obligation to notify the Government of their whereabouts at all times. Those who fail to do so will be subject to up to 5 years in jail and $10,000 fines.

In other words, even those who have registered and are subject to criminal penalties when they neglect to notify selective service of their change of address. And in the past, registrants have been sent to prison for this type of violation.

Moreover, those who initially refuse to register but later actually do register will be subject to prosecution and conviction.

In one case, after the defendant was indicted, he registered based on an agreement with the U.S. Attorney that the indictment would be dropped. The Department of Justice overruled the agreement, ordered the case prosecuted, and obtained a 30-month jail sentence.

I was intrigued by the remarks of Dr. Rostker when he suggested or implied that the solution to nonregistration is having the nonregistrant register. And he implied that somehow that would resolve this issue.

But as the *Saunders'* case illustrates and numerous cases over the last 20 years illustrate, that's not enough to register. People will be prosecuted and sent to jail for late registration.

Although it has now been 4 months since registration was proposed, the administration has steadfastly refused to promulgate a policy on enforcement of registration. But even if one were developed, experience has shown that many U.S. attorneys would not follow it, the Department of Justice would make exceptions, and judges would sentence according to their own practices.

Between 1969 and 1973, the Federal courts in the fifth circuit imprisoned 54.3 percent of draft offenders. But the Federal courts in the sixth circuit only imprisoned 21.5 percent of the draft offenders.

In the southern district of New York, which includes New York City, 140 draft offenders were actually sentenced. But in the northern district of California, in that same period, over 600 draft offenders were sentenced.

We think that that type of disparity is appalling.

Investigation of alleged violations of the act also present crucial civil liberties concerns. As I stated before, failure to register will be investigated by the FBI. The FBI can legally comb high school yearbooks and seek the use of college entrance lists, drivers license data and numerical census data.

These investigative techniques, however, will probably not yield current data on the wherabouts of nonregistrants. The next likely step by the administration would be to seek an exemption to the Privacy Act of 1974. This would permit Selective Service and the Department of Justice to have access to data from the Social Security Administration and other sources which would yield current addresses.

And since social security numbers must be disclosed on the selective service registration form, that's the number and agency they're likely to turn to first.

That the administration will seek this exemption is not mere speculation because as Dr. Rostker again reiterated today and as he stated previously on the Pacifica Radio Network, they have considered that option and while they have not proposed it yet, they are prepared to do so should it become necessary.

Beyond nonregistration, the antidraft movement may again come under assault. It is a crime to counsel, aid, or abet a violation of the draft laws. Numerous organizations already are engaged in counseling young people on the difficult choices they must confront. Although the ACLU believes that this is protected first amendment activity, the Department of Justice has in the past prosecuted certain types of counseling.

Some of these prosecutions were successful and many were unsuccessful.

Moreover, our overwrought conspiracy statutes can be used as an investigative basis for looking into antidraft activities. This is why we thought the amendment yesterday was so important to enact what we believe to be the constitutional standard required by the Supreme Court case of *Brandenburg* v. *Ohio*, requiring incitement to obstruction of registration to be imminent because counseling, in the context of meetings which would not incite people to imminently violate the statute should not be punished under the criminal law.

And we don't believe it can be punished under the criminal law based on the *Brandenburg* case.

The size of the surveillance and enforcement system that will be necessary here will have to be truly staggering. Mr. Lynn has cited statistics which go into the hundreds of thousands in terms of nonregistration. With this type of sizable noncompliance, enforcement would become selective. It would have to become selective.

In the end, and as in the past, it would be the most vocal opponents of the system who would end up being prosecuted.

Even then, our criminal justice system would certainly be overwhelmed. As far as the antidraft movement is concerned, there are right now over 350 local antidraft groups operating in every State. In order to determine whether this antidraft activity is violating the law, law enforcement agencies would be compelled to reestablish a surveillance bureaucracy.

If the administration is serious about the enforcement of this system, as we believe it is. Americans may witness the building of a national security state far beyond the dimensions of the one created by Richard Nixon.

Before concluding, I would like to discuss several other aspects of the President's proposal which are of mutual concern to the subcommittee and the ACLU.

The President has proposed appropriating money for the selection and training of local draft board members. Yet, the administration has made no recommendations for changes in the Military Selective Service Act; rather. Selective Service will promulgate new regulations.

Dr. Rostker has stated that although the administration felt no statutory changes were appropriate, Selective Service will endeavor to make its new regulations equitable. But it is the statute itself which is defective. The MSSA is seriously lacking in the kinds of procedural rights and safeguards that citizens have a right to expect as a part of any Government action affecting an individual's liberty.

While the 1972 amendments to the MSSA provide for the first time that local draft boards state reasons for their actions, there are no transcripts required of draft board hearings.

Further, although registrants can now make personal appearances before local and appeal boards and present witnesses, they are expressly forbidden by regulation from being represented by counsel.

As a matter of procedural fairness, if not of constitutional right, representation by counsel ought to be permitted at draft board hearings.

Another procedural protection lacking in the MSSA is the right to a civil trial de novo in Federal district court prior to induction to challenge the denial by a draft board of conscientious objector or other status requested.

Under current law, the only time a registrant may challenge classification prior to induction is if he violated the law by refusing induction and raises improper classification as a defense in the subsequent criminal prosecution. Otherwise, a registrant who has been denied CO status must report for induction and begin training. A court may later reverse the draft board decision on a petition for writ of habeas corpus, but the damage has already been done.

Finally, the ACLU believes the MSSA is unconstitutional because it applies to men only and as such, is an unconstitutional sex-based classification. The ACLU will go to court to stop a males-only draft registration. The congressional rejection of including women within the MSSA will likely result in a judicial invalidation of the entire system.

This discussion of civil liberties concerns is by no means exhaustive, but I do think that it illustrates the serious deficiencies in the MSSA and the inequities of the Selective Service System. We urge Congress to comprehensively revise and reform the MSSA if draft board system or the Selective Service System is to be reactivated. And if it is the will of the Congress to resume draft registration, we urge Congress to carefully monitor the enforcement of the system, including investigations, prosecutions, and sentencing practices.

Without this strict oversight, draft registration invites the Government to interfere with the political activity and abridge the constitutional rights of American citizens. Thank you.

[The complete statement of Mr. Landau follows:]

STATEMENT OF DAVID E. LANDAU, STAFF COUNSEL, AMERICAN CIVIL LIBERTIES UNION, WASHINGTON OFFICE

I appreciate this opportunity to appear before the Subcommittee to present the views of the American Civil Liberties Union on the issues raised by the

Administration's proposal to reactivate the Selective Service System and resume peacetime draft registration. The ACLU is a nationwide organization of over 200,000 members dedicated to the preservation and enhancement of the Bill of Rights. Throughout its history, the ACLU has played an active role in the debate over the Selective Service System. Indeed, the ACLU traces its origin to the National Civil Liberties Bureau which was founded in 1917 to assist conscientious objectors during World War I. Since that time it has consistently opposed the inequities of the Selective Service System in judicial, legislative and other public forums and today continues to oppose peacetime military conscription and an active Selective Service System as severe infringements on individual liberties.

The ACLU's strong opposition to the Administration's proposal for peacetime draft registration is, at this point, well known. In recent months, we have presented our views to several Committees of the Congress. In brief, it is the judgment of the ACLU that draft registration is an unjustified and intrusive wartime national security measure. In the words of the Director of the Selective Service System, Dr. Bernard Rostker, draft registration is "redundant and unnecessary." Since proposing registration last January, the Administration has not produced any study, report or evaluation demonstrating the necessity of this system. In its continuing heavy effort to press for draft registration funds, we believe the Carter Administration is leading this country into further crisis. Draft registration will not resolve many of the serious international problems facing this country. Rather, it will probably lead to domestic turmoil and unrest, and further alienate young people from the government. The ACLU is deeply concerned over the impact of draft registration on the civil liberties of American people. Today, I would like to explore those concerns with the Subcommittee.

No one can predict the precise reactions to and impact of draft registration. However, we do have a very recent painful experience with an active Selective Service System during peacetime. The draft in the absence of a recognized imminent threat to the nation was resisted, avoided and evaded. Some chose jail, others exile. Citizens became contemptuous of the government. Eventually, opposition became militant, even violent. The government sought to halt the disruption. It is not only enforced the system against those who resisted it, it also took costly steps to prevent disruption and in some cases to silence critics.

During the Vietnam War, anti-draft activity became one of the excuses for widespread political surveillance and disruption programs. The CIA monitored movements of anti-draft activists, burglarized homes, eavesdropped on conversations, and bugged telephones.

The Department of Justice provided lists of names to the CIA for these purposes. The FBI, which had jurisdiction to investigate criminal violations of the draft laws, infiltrated and disrupted anti-draft and anti-war groups. Almost every member of the Committee Against Registration and the Draft, including the ACLU, was at one time or another targeted by the FBI. Even the Army engaged in surveillance of domestic political activity. Powers that were intended to weed out saboteurs, espionage agents and criminals were directed at anti-draft and anti-war activities. If these powers remain unchecked, as they have been for the last thirty years, law enforcement and intelligence systems have a tendency to operate outside of the Constitution, and thereby stifling dissent.

There are some who are convinced that this type of lawless government activity is not likely to occur again. The ACLU believes that since draft registration by its very nature is a massive government surveillance system, it will inevitably lead to government infringement of civil liberties. By 1985 all young people ages 18–26 will be under a legal obligation to notify the government of their whereabouts at all times. Those who fail to do so will be subject to up to five years in jail and $10,000 fines. In other words, even those who have registered are subject to criminal penalties when they neglect to notify Selective Service of their change of address. In the past, registrants have been sent to prison for this type of violation. (See, *United States* v. *Baker*, 487 F.2d 360 (2nd Cir. 1973), *United States* v. *Munns*, 457 F.2d 271 (9th Cir. 1972).)

Moreover, those who refuse to register are also subject to the same penalty. Moreover, those who initially refuse to register but later actually do register will be subject to prosecution and conviction. (*United States* v. *Koehn*, 457 F.2d 1332 (10th Cir. 1972), *Kaohelaulii* v. *United States*, 389 F.2d 495 (9th Cir. 1968).) In one case, after the defendant was indicted, he registered based on an agreement with the U.S. Attorney that the indictment would be dropped. The Department of Justice overruled the agreement, ordered the case prosecuted, and obtained a 30 month jail sentence. *United States* v. *Saunders*, 435 F.2d 683 (5th Cir. 1970).

Although it has now been four months since registration was proposed, the Administration has steadfastly refused to promulgate a policy on enforcement of registration. But even if one were developed, experience has shown that many U.S. Attorneys would not follow it, the Department of Justice would make many exceptions, and judges would sentence according to their own practices. Between 1969 and 1973 the federal courts in the Fifth Circuit imprisoned 54.3 percent of draft offenders. During the same period the Sixth Circuit imprisoned 21.5 percent. In the Southern District of New York, which includes New York city, 140 draft offenders were sentenced. In the Northern District of California, over 600 draft offenders were sentenced.[1]

Investigations of alleged violations of the Act also present crucial civil liberties concerns. As I said, failure to register will be investigated by the FBI. The FBI can legally comb high school yearbooks and seek the use of college entrance lists, drivers' license data, and numerical Census data. These investigative techniques will probably not yield current data on the whereabouts of non-registrants. The next likely step by the Administration would be to seek an exemption to the Privacy Act of 1974. The Privacy Act prohibits data-matching among federal agencies. This would permit Selective Service and the Department of Justice to have access to data from the Social Security Administration and other sources which would yield current addresses. Social Security numbers must be disclosed on the Selective Service registration form. That the Administration will seek an exemption to the Privacy Act is not mere speculation on the part of the ACLU. Dr. Rostker recently stated in an interview on the Pacifica Radio Network:

"If they feel for whatever reason, that there are people getting a free ride because of the technicalities in the Privacy Act, my personal view would not go to increasing the Privacy Act but moving against it to strike down on those specific instances and provide for more direct access to federal files. We have chosen not to request that, but as I have indicated to preserve this option. Rest assured, we take the enforcement of this seriously. It is a felony, a crime, not to register. We will endeavor to identify people who do not register."

Beyond nonregistration, the anti-draft movement may again come under assault. It is a crime to counsel, aid or abet a violation of draft laws. (50 U.S.C. 462.) Numerous organizations are already engaged in counselling young people on the difficult choices they must confront. Although the ALCU believes that this is protected First Amendment activity, the Department of Justice has in the past prosecuted certain types of counselling Moreover, our overbroad conspiracy statutes can be used as an investigative basis for looking into anti-draft activities. Once again, law enforcement agencies will be drawn into the political arena.

The size of this surveillance and enforcement system will have to be truly staggering. Utilizing statistics of the Selective Service, Rev. Barry Lynn has estimated that in the fifteen month period between January 1973 and March 1974 there were over 212,500 nonregistrants. In 1974, he estimates over 202,800 nonregistrants. These figures are significant because they are from a time when there was registration but no induction. The resumption of registration is likely to involve far greater numbers of nonregistrants.[2] With this sizeable noncompliance, enforcement would become selective. In the end, it would be the most vocal opponents of the system who would be prosecuted. Even then, our criminal justice system will be overwhelmed. As far as the anti-draft movement is concerned, with over 350 local anti-draft groups operating in every state, law enforcement agencies would be compelled to reestablish surveillance bureacuracy to monitor possible violations of the draft laws. If the Administration is serious about the enforcement of this system, as we believe it is, Americans may witness the building of a national security state far beyond the dimensions of the one created by Richard Nixon.

Before concluding, I would like to discuss several other aspects of the President's proposal of mutual concern to the Subcommittee and the ACLU. The President has proposed selecting and training local draft board members. Yet, he has made no recommendations for changes in the Military Selective Service Act (MSSA). Rather, new regulations will be promulgated shortly. Dr. Rostker has stated that although the Administration felt no statutory changes were appropriate, Selective Service will endeavor to make its new regulations equitable. But, it is the statute itself which is defective. The MSSA is seriously lacking in the kinds of procedural rights and safeguards that citizens have a right to expect as part of any government action affecting an individual's liberty. While the 1972 amendments to the MSSA provided for the first time that local boards state reasons for their actions, there are no transcripts required of draft board hearings. Further, although registrants can make personal appearances before local and appeal boards and present witnesses, they are expressly forbidden by regulation from being represented by counsel. (32 CFR 1624.4(e).) As a matter of procedural fairness, if not of constitutional right, representation by counsel ought to be permitted.[3] Selective Service regulations recognize that complex factual and legal questions involved in the classification process are complicated.[4] With the vast body of Selective Service case law that developed during the 1960's and 1970's, a right to counsel at a draft board hearing is a fundamental procedural protection that should be afforded to registrants.

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[1] Source; Administrative Office of the U.S. Courts.

[2] Former Director of the Selective Service, Curtis Tarr has concurred in this assessment in previous testimony before this subcommittee.

Another procedural protection lacking in the MSSA is the right to a civil trial de novo in federal district court prior to induction to challenge the denial by a draft board of conscientious objector or any other status requested. Under current law the only time a registrant may challenge classification prior to induction is if he violates the law by refusing induction and rises improper classification as a defense.[5] Otherwise, a registrant who has been denied CO status must report for induction and begin training. A court may later reverse the draft board decision on a petition for writ of habeas corpus, but the damage has been done.

The ACLU's concerns about due process protection in draft board proceedings particularly where conscientious objectors are involved have been greatly amplified by the Defense Department's rapid mobilization timetable. Unlike past drafts, DOD now needs 100,000 men within 60 days. In such a scenario, due process could easily fall by the wayside.

Finally, the ACLU believes the MSSA is unconstitutional because it applies to men only and as such is an unconstitutional sex-based classification. The ACLU will go to court to stop a males-only registration. The congressional rejection of including women within the MSSA will likely result in the judicial invalidation of the entire system.

This discussion of civil liberties concerns is by no means exhaustive. It does, however, illustrate the serious deficiencies in the MSSA and inequities of the Selective Service System.

We urge Congress to comprehensively revise and reform the MSSA before the Selective Service System is reactivated. If it is the will of the Congress to resume draft registration, we urge the Congress to carefully monitor the enforcement of the system including investigations, prosecutions, and sentencing practices. Without strict oversight, draft registration invites the government to interfere with political activity and abridge the constitutional rights of American citizens. Thank you.

Mr. Kastenmeier. Thank you, Mr. Landau. You made reference to filing suit. It's my understanding that the National Organization of Women is also contemplating filing a suit, at least on the sex discrimination issue.

Is that the information you have?

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[3] Although the Supreme Court has never decided the issue of constitutional right to counsel at draft hearings, lower courts are virtually unanimous that there is no such right. *Levin* v. *Selective Service Local Board No. 18*, 458 F.2d 1287, 1287, n.22 (2nd Cir. 1972). The ACLU disagrees with these decisions. We believe that since critical life and liberty interests are at stake in the draft board hearing, there is a constitutional basis in the Due Process Clause of the Fifth Amendment for the right to counsel.

[4] 32 CFR 1604.41 provides for the appointment of advisors to the registrant to assist in the preparation of questionnaires and other Selective Service documents and to advise registrants on rights and liabilities under the MSSA.

[5] Under current law, a court may only review a decision of a local draft board as a defense to a criminal prosecution if the review goes to the jurisdiction of the board or when there is no basis in fact for the classification. 50 USCA App. 460(b)(3). *See*, *Oesterreich* v. *Selective Service Local Board No. 11*, 393 U.S. 233 (1968).

Mr. Landau. I don't know what their specific plans for filing suit are. I know they have said that they would support the ACLU suit when it is filed.

Mr. Kastenmeier. I see. Have you already prepared your legal pleadings and selected a district?

Mr. Landau. Yes, yes. Our present intention is, when the President signs his proclamation, to file suit immediately.

Mr. Kastemeier. I understand. Reverend Lynn, what is likely to be th reaction of traditional religious groups who in the past have either expressed reservations about or in some cases defiance of laws requiring them to respond to conscription or to, in this case, registration?

Have you any information on how they may respond to the registration requirement without a draft?

Mr. Lynn. In the past, many of the members of so-called historic peace churches who have the greatest percentage of their members claiming conscientious objector status, were able, were willing to register with Selective Service because there was a clear understanding that within a few days they would receive something called a form 150 in the mail in which they could immediately claim conscientious objector status.

The thing that has troubled many religious groups now is that in the absence of such things as form 150's, how is an individual going to be able to state his, in a sense, symbolic intention to claim conscientious objector status under any classification system that might be developed?

Senator Hatfield was deeply concerned about that. That is why he offered an amendment permitting a person at his option to check off that he at that time believes himself to be a conscientious objector.

This, in my judgment, will reduce the level of noncompliance by religious conscientious objectors because at least they will be able to make their symbolic statement.

If the administration succeeds, as it intends to do, to delete that from the Senate bill, I think that they are in fact guaranteeing an even higher level of nonregistration.

Mr. Kastenmeier. If all young women of the same age were required to also register, we would undoubtedly have a larger group who might potentially be out of compliance and susceptible to the penalties of violation.

Notwithstanding that, you nonetheless feel that women in the same class as men should be required to register.

Mr. Lynn. Our view is that under the scrutiny of serious people looking at this specific registration proposal, that it does not stand up to rational analysis. It is not useful as a matter of military preparedness. It is nothing but an intrusion into the lives of anyone who happens to be covered by it.

So, to us, the issue is just registration at this time. It is inappropriate. It is an intrusion that is unnecessary and for which there is no military justification.

So we would oppose registration of men or women on those grounds.

Mr. Kastenmeier. Mr. Landau, you mentioned several reservations or exceptions that you have with the Selective Service System in terms of right to counsel and certain other fundamental procedural protections that registrants might have.

Four or five years ago this committee reformed the parole procedures in the U.S. Federal system enabling prisoners petitioning for parole to be represented by counsel of their own choosing and also affording certain due process protections in change of status proceedings, which is somewhat analogous to the situation in which registrants might find themselves.

This has been widely supported, although I don't know whether in the reform of the Federal Criminal Code parole will have the same role to play in the future. But, nonetheless, parole proceedings are at least cloaked with due process protections which had not historically been the case.

It does seem, does it not, anomalous that in a sense prisoners have greater rights than others whose status may equally be affected in terms of an obligation to commit a period of their lives? In that sense, the obligations are somewhat similar; yet, for the military conscription situation we do not have procedural safeguards provided for individuals.

Mr. **Landau**. Well, as you know, we strongly supported the efforts a few years ago to reform the Military Selective Service Act. Some of the ideas I discussed in my statement are the ideas we tried to put into the statute back then. We took it as far as the Congress was able to in this area.

I would certainly agree with your analogy and I think that it is really—I find it inconceivable to me why continually the Selective Service and the administration opposes the idea of having a right to a counsel present at least in the initial stage of the draft board hearing, or to represent someone in preparing the appeals papers.

The complex body of case law that developed during the sixties and early seventies certainly is beyond the expertise of most 18- and 19-year-olds. It seems to me that the Selective Service itself has recognized the complex legal and factual questions involved in draft board hearings by providing for advisers. But yet, the regulations in other areas say no counsel.

So it seems to me to be almost a basic right and certainly, one of the reasons we were successfully able to argue the counsel was constitutionally required in a parole hearing was because a hearing was granted.

I think the mere fact that there is a hearing indicates that counsel should attach because the fact that they have to hold a hearing means that there will be factual legal questions that have to be resolved.

Mr. **Kastenmeier**. One other question I have is based on the experience Government has had with other Federal programs, black lung, food stamps, aid for dependent children, and Presidential clemency. Basically, Government has had a great deal of difficulty communicating the rights of people or obligations of people to the population at large.

There always is a great deal of slippage in terms of just sheer communication of that sort of information to constituent groups.

You've indicated you think $400,000 is not adequate to serve the purpose of notifying the country. What would you think constitutes either a minimal method or a minimal amount of money to be devoted to notifying these young people what their obligation is and that such an obligation exists?

Mr. LYNN. Last week Senator Hatfield also attemped to transfer approximately $400,000 more away from the training and recruitment of local draft board members into a more effective public relations program precisely because he was concerned, as we are concerned, that many people won't even learn that there's a legal obligation to register.

The administration opposed that amendment with some vociferousness and, in fact, defeated it. I suspect that it will come up again on the Senate floor and that it will also have stringent opposition there. I do think that it's more than a question of money, however; it's a question of how effective their publicity campaign is likely to be. They want to register people in June or July. It is already the end of May. The fact that they haven't started a major publicity campaign already, I think, guarantees that the program cannot succeed.

Mr. KASTENMEIER. But could they do so without it becoming authorized by law or funded by law?

Mr. LYNN. Well, there's apparently some question. As you know, the Selective Service System had requested in a supplemental 1980 appropriation that they be given sufficient funds to print new registration forms. Unknown to the Congress, they decided to print these new forms without the approval of Congress. They apparently believe that they have the power to do virtually anything whether the Congress appropriates the money or not.

They have also produced this document, which is called Selective Service and You, which purports to tell people what their rights under registration and conscription laws are. I have many problems with this document, but they have gone ahead and apparently have begun the publication of this.

So regardless of what the Congress intended for them to do, they are printing a great deal of information.

I think that the administration has certain, shall we say, political problems with delaying registration. If they delay registration into next fall, which would be a much more reasonable time if one wanted to look at this coldly and in a rational manner. But next September or October, campuses are once again alive. The amount of dissent will certainly increase and I think the Carter administration, as I understand it, is well aware that registration in the summer might provide less opportunity for college campuses to voice their opposition.

Mr. KASTENMEIER. Well, it might make sense to have registration the first Tuesday following the first Monday of November.

Mr. LYNN. Many people are already viewing it that way.

Mr. LANDAU. Mr. Chairman, if I may amplify on Mr. Lynn's remarks. It relates back to the point that I believe Mr. Railsback was making, which is the willful nonregistration in terms of how the case law will treat that. And Dr. Rostker indicated that, I believe he said the word "presumptively," that if it was in the electronic media and the print media, presumptively there would be notice.

I have a lot of problems with that. There are many people, particualrly, who may not see those ads, may not read the New York Times on the Sunday before registration or two Sundays before registration and see the ad from Selective Service.

There may be other problems with radio announcements on radio stations. Selective Service may run out of money and they may not be able to run it on every single radio station in the country.

Particularly poor people. That kind of campaign, electronic media or print media, is certainly not going to reach a lot of the poor people in this country. And I think that the standards certainly should be intention nonregistration and if the Government cannot prove that the person intentionally did not violate the law, then I don't believe the criminal prosecution should go forward in this area.

Mr. Kastenmeier. Well, I'm not sure that Dr. Rostker in that connection stated what would be the Justice Department standards in terms of prosecution. I think he was stating what he would prefer as an agency seeing its laws enforced by another agency.

One thing Dr. Rostker did say which I did not know, and that is that he is calling for recruitment next year of 8,500 citizens, who, in an emergency, could become local board members who would adjudicate claims. They would be trained in Selective Service policies and procedures.

Of course this will happen, next year and registration will presumably occur this year. He said nothing, and I must in due course ask him whether there are any plans with respect to State selective service directors, whether there's any affirmative action or any civil service or merit board selection process because I think the credibility of the system in part would depend on certain changes in that regard.

Mr. Landau. Dr. Rostker's intent I think is a good one in the sense that he believes that training the local draft board members in Selective Service procedures prior to classification and induction might avoid some of the results we've had in the past.

The problem is that if he decides to get this pool of 8,500 possible potential draft board members, the statute says that Governors appoint the draft boards. There is nothing in the statute that would say that the people that Dr. Rostker has trained will be the draft board members. And as we know in the past, we've had a great deal of problems with the composition of local draft boards.

So I don't think that the fact that they're training them now or selecting this pool goes to the heart of the issue.

Mr. Lynn. I think that Dr. Rostker's intention here is make the system more fair and more equitable. I think he honestly believes that at some point Selective Service can be made fair and equitable, but I disagree with that.

I think that whenever you have a system, as any selective system would be, when you have the first exemption or exception or deferent, you open up the whole system for a field day for lawyers and a field day for people who understand the issue.

As a lawyer, I know a lot about this act and as a minister, I can write great statements about conscience. My wife is a doctor and she can find something wrong with anyone at any time.

And so the person who goes to see the Lynns out in Virginia to be counseled about selective service is going to get a vastly more knowledgeable couple of people to talk to them than is Joe Shmo from out in nowhere who doesn't have any access to counselors, doctors, lawyers, clergy, and so on.

Any Selective Service System that Dr. Rostker or anyone else will create will be inherently unfair, in my judgment.

Mr. Kastenmeier. Well, I'm certainly of the impression that Dr. Rostker is conscientious about his duties and about being fair in the context that he can be fair within the existing system.

Well, I thank you very much. I'd like to yield to my colleague from North Carolina, Mr. Gudger.

Mr. GUDGER. Mr. Chairman, I thank you for giving me an opportunity to comment and participate to some degree in these proceedings. I regret that my attendance here was delayed because of a Senate-House conference on a matter of legislation that required very prompt and immediate consideration. Therefore, I was not able to be here at the opening of the meeting.

I am, of course, like every American concerned that whatever does evolve here by way of a registration system and by way of a modification of an existing statute, that there be a system which is uniform in application, fair and just, provides alternatives to deal with religious and conscientious objection, and hopefully, considers with equity and with justice the genuine needs of our country.

There are those apparently who do believe that our standby reserve is far understrength, that wherein we may have an adequate or nearly adequate standing army to meet our needs, or standing in relation to meet our needs, that we do not have the standby reserve force required in the event of a sudden confrontation, and therefore, that some machinery needs to evolve which would be able to supply the component that might be required to fill up the ranks in the event that there were a sudden need to expand the military potential.

As a matter of fact, the best thought that I seem to be encountering on this would suggest that we have a standby reserve force now of some 200,000 personnel, whereas, perhaps 750,000 or 800,000 would be more appropriate, and that possibly the training of that personnel could involve merely 4, 5, or 6 months of active basic training with standard training programs in place, and has, as has been evolved in many of the European countries where the training period is short and the commitment to maintain standby potential is relatively young.

Well, whatever the system, do I understand your comments, and I think that both of you seem to be expressing this, is that we must not ever get back to a system again where we have all kinds of exemptions and exceptions and methods of postponing or deferring whatever duty is to be the military requirement of our youth?

Mr. LYNN. I think that we reach a point where exemptions and deferments can be eliminated in large part.

To end the student deferment, as was done in 1971, certainly made that system somewhat more equitable. But it didn't change the fact that there are still medical deferments and where a person with the best doctors is more likely to find the mental or physical illnesses that will get him or her out of the service.

It didn't eliminate the deferment or exemption for conscientious objection, and it shouldn't have. But the fact is, the person with access to priests, rabbis, clergymen are going to have a better chance of getting that exemption under the act.

So I think you do reach a point where no matter what your intentions are, you still have a system which is unfair to the people who have least access in our society to lawyers, doctors, and others who can be helpful to them.

Mr. GUDGER. Do you feel, Mr. Lynn, that consicentious objection is justification for exemption from nonmilitary compulsory service?

Mr. Lynn. I personally believe that persons can be conscientiously opposed to registration or noncombatant compulsory service. I do believe that, yes.

Mr. Gudger. Well, then, if it be conceded that there is a duty of the citizen to fulfill a function in time of national emergency to meet the needs of his Nation, but that that duty may be qualified so as to relieve him of the duty of taking up arms and engaging in armed combat where there is conscientious conviction that this is abhorrent to his religious faith, do you see anything wrong with letting that man serve some stateside duty which has no direct bearing upon the military engagement itself, but merely as a service to his Nation perhaps to maintain the safety of his forest, the safety of his fields, the safety of his land?

Mr. Lynn. That's not a religious belief that I have, but it is a religious belief that I understand others to have and it goes something like this. They would say that any kind of compulsory system which is linked even indirectly to the Military Selective Service Act and its function creates problems of conscience for them.

That is the case with some of the smaller sectarian religious groups in the United States. There are groups, for example, who are willing to do alternate service as long as it was done within the communities in which they were a part.

I believe the Old Order Amish, for example, were willing to do alternate service as long as it could be done in their community.

The problem is that I'm afraid that some of the documents we've seen from selective service now would indicate that in the future, alternate service might be a much more broad-based Federal bureaucracy that would not take into account the fact that some people, out of their own religious beliefs, which are not mine, can, for example, only do alternate service in their own communities. I want to preserve as much as possible in this free society the right to exercise all kinds of religious beliefs, including those which oppose, in conscience, alternate service at any point.

Mr. Gudger. How would you make the system fair? Let us assume that we confront an emergency in 6 months and it becomes apparent to this Congress that we're in this situation. What would be the fair system that you foresee?

Mr. Lynn. I think the only genuinely fair system is one, as far as the scenarios that I can project—and if this were the Armed Services Committee, I would have presented in more detail some of this information—I don't foresee a scenario where a military draft is a viable option in the near future.

I cannot say that I or the Committee Against Registration and the Draft or the United Church of Christ would always be opposed to conscription. But we cannot see on the horizon any scenario which involves the sizable number of personnel that would be obtainable only through a draft.

Your statements about the Reserves are very important. The fact is about a year ago there was serious concern about our Individual Ready Reserve and the size of it. There was an increase last year through management changes and through direct enlistment into the

Individual Ready Reserve of about 40,000 and another increase so far this year of about 20,000.

So our Individual Ready Reserve strength is now up to 420,000.

I think managerial changes, better pay, better benefits, better treatment of people in the military is a far preferable option to returning to any form of military conscription. I think it's more consistent with our fundamental beliefs as a country. I think it's more consistent with our constitutional history.

America has done without a draft for all but 30 years of its long 205-year history. Unless there is much stronger evidence, that it is the only way to go now, it is something which, as a matter of history and principle should be rejected, as well as something to be rejected on practical grounds because, in fact, the All-Volunteer Force is expanding in size and right at this time.

Mr. **Gudger**. One final question and I will yield, Mr. Chairman, and that is this: I do not perceive registration as necessarily implying compulsory military service, merely as requiring that 19- and 20-year-olds come down and identify themselves and provide such basic information as may be required should there be a need for compulsory military service or some compulsory training program such as I have outlined earlier.

Do you see any reason why there should be any exception to registration if registration is merely the disclosure of your name, your age, your residence, your location, and perhaps your educational background?

Mr. **Lynn**. Well, I do. I do think that it is legitimate for persons to make a decision that says that under their understanding of their particular moral precepts or their philosophy in a more philosophical sense, are opposed to taking that first critical step into a military conscription system.

And registration, I think the administration has conceded, is at least the first step—they allege they do not want to go any further—but it is the first step toward reviving the whole selective service bureaucracy and toward providing for the possibility of conscription in the future if it becomes necessary.

So I think registration is the key to the whole revival of selective service and that if the Congress makes a decision finally this year to begin registration, it is sending a strong message to young people that the Congress is dissatisfied with the volunteer approach, that it is willing to go back to building up the whole selective service bureaucracy and consider conscription once again.

And I think that young people are not irrational when they reach the decision that registration is nothing but the first step back to the draft. I don't think that's irrational.

Mr. **Gudger**. Let me ask you another question in the same context. Do you see anything wrong with an Exeutive order directing that all 19- and 20-year-old personnel data gathered in the current census be made available in the Selective Service System?

Mr. **Lynn**. I see a legal problem in that I think that would be a direct violation both of the Census Act and also of the Presidential proclamation that was issued last year by President Carter, where he specifically indicated that census data would not be used for purposes of "military recruitment," I think is the phrase in the document.

I can certainly provide you with all of that information. But I do think that with the extraordinary amount of publicity that has been given to the privacy of the census, that to go into those census records at this point, for the Congress to change the law and go into those records I think would be a profound mistake because I think many Americans are already concerned about what the census will be used for. I would see great problems with using census data in that way.

Mr. GUDGER. So even though the Congress might, in its judgment, make available that basic information from census, which would be name, residence, age, you would say that you would feel that a citizen would be justified in refusing to respond to the census requirement with knowledge that that information and only that information which I've outlined would be made available to the Selective Service System?

Mr. LYNN. Well, in some moral sense, I think my answer is "yes." But I think my more fundamental issue is that under the understanding with which more people have now filed their census forms and the understanding of privacy which was made so clear in all of the publicity concerning the census, that I just think that it would be a terrible public policy error for the administration or the Congress to go into those records.

Parents would then have felt somehow that they had given information that might be used to prosecute their own children, and I think that that is the kind of imagery that we can probably do without in this country.

Mr. GUDGER. Do you consider that name, age, and place of residence is privileged under the privacy provisions of the census?

Mr. LYNN. That is my understanding of the statute.

Mr. GUDGER. Even though this information is generally public information in every courthouse and every tax office in the land?

Mr. LYNN. I think that if you are linking it specifically to use for the purpose that you described initially, which was for this collection for some kind of military preparedness purpose, I think that would create problems under the statute and under the proclamation.

I take it you see nothing wrong in the administration using social security information and Internal Revenue Service information.

Mr. LANDAU. If I may comment on this area, Mr. Gudger, we have a great deal of problems with data matching. It's when the Government collects or asks citizens for information for a specific purpose and then later on decides it wants to use it for another purpose and then goes out and tells people, well, we're going to use it for this purpose, but they didn't disclose that when they collected the information.

That's what the Privacy Act of 1974 is designed to prevent, as well as laws in the Internal Revenue Service and the Tax Reform Act of 1976, tax returns were made confidential. Similarly, social security numbers. There is a prohibition on their use, not for all uses, but for a great deal of uses outside the purpose for which the information was collected.

I think that the American people do fear this kind of sort of computerized Government, where the Government can sort of just punch a button and they can punch out all of this information collected by all the different agencies and use it for any purpose for which they deem, the Government deems, fit.

And I think that one thing that certainly the ACLU has been attempting to do in a number of areas is to protect the privacy of records and the use that those records go to after the information is collected.

Mr. GUDGER. Thank you, Mr. Chairman. I have no further questions.

Mr. KASTENMEIER. Well, on behalf of the committee, I desire to express our commendation to both you, Rev. Barry Lynn, and you, David Landau, for your exceptional testimony here today.

This is obviously a continuing query. It is clear that both the executive branch, as well as the American people, do not have the answers to some of the questions that are being asked and we will endeavor to continue to pursue those.

We thank you for your contributions.

Mr. LYNN. Thank you very much.

Mr. LANDAU. Thank you.

Mr. KASTENMEIER. Last, the Chair would like to call, and I desire to express my regrets that he's had to wait so long. He's been so patient. That is, I'd like to greet Maj. Gen. J. Milnor Roberts.

General Roberts is executive director of the Reserve Officers Association of the United States. General Roberts is a former chief of the U.S. Army Reserve for the Department of the Army. The association which he directs has a membership of 120,000 individuals, all reserve officers of the armed services from really any of the military services.

I wish to personally thank Major General Roberts for accepting my invitation to testify today. He has brief testimony, but notwithstanding that, we are very pleased to greet him and have his comments.

TESTIMONY OF MAJ. GEN. J. MILNOR ROBERTS, EXECUTIVE DIRECTOR, RESERVE OFFICERS ASSOCIATION OF THE UNITED STATES

General ROBERTS. Mr. Chairman, I'm very pleased to be here and I thank you for the opportunity.

I would ask that my statement be inserted in the record.

Mr. KASTENMEIER. Without objection, it will be.

[The statement of Maj. Gen. Roberts follows:]

STATEMENT OF MAJ. GEN. J. MILNOR ROBERTS, ARMY OF THE UNITED STATES (RET.), EXECUTIVE DIRECTOR OF THE RESERVE OFFICERS ASSOCIATION OF THE UNITED STATES

Mr. Chairman and members of the committee, we welcome the opportunity to appear before your committee to express our views and make recommendations relative to restoration of registration for possible military service.

As you may know, ROA is chartered by the Congress with the objective of seeking and supporting a strong national defense posture. We consider this charter a serious obligation, and we are deeply concerned about the state of our military strength. While the "Volunteer Army" concept has had some success since the termination of inductions in early 1973, it is now obvious that "VOLAR" has been a failure of major significance for the Reserve of the Army. Furthermore, the quality and tenure of recruits entering the Active Army in the past several years have been notably unsatisfactory, and corrective steps must be taken in the near future.

With regard to Army Reserve Forces, there is now a shortage of at least 500,000 people in the units of the Army Reserve and Army National Guard together with the Army Individual Ready Reserve (IRR). This number is based on a requirement for major action within NATO. However, most contingency plans involving Army forces in any likely theater of operation include the mobilization and deployment of some Reserve Forces.

There is no practical way to obtain the number of people needed in the Army IRR other than an equitable conscription plan. And since a minimum of four months is required counting from the first day of duty at a training base, advance planning and training is essential. We do not believe that the United States will ever again have the luxury of months or years of military build-up subsequent to the initiation of major hostilities. The requirement for trained individuals to fill up Active, Reserve and National Guard units; to replace initial combat losses; and to support subsequent losses would be substantial from "M-Day" on.

For this reason, ROA supports the President's request for funding to begin male registration of 19- and 20-year-olds in 1980 and annually thereafter. However, we believe that additional measures are required which would be adopted in 1981.

Based upon experience in previous periods of required registration and inductions, some violations of the law including failure to register are bound to occur. It is possible that the lenient treatment accorded violators of Selective Service laws following the Vietnam era will encourage some of our Nation's youth to ignore their obligations in the current era. While we believe the great majority will obey the law, it will be necessary for the Federal Government to have the ability and authority to track down evaders under due process.

This task will be difficult at present due to the Federal "Privacy Act" denying the use of data available through the Internal Revenue Service, the Social Security System, or the Census Bureau. Furthermore, State statutes known as "Privacy Acts" will present additional problems unless they are modified to prevent their abuse.

Therefore, we recommend that the Congress adopt an amendment to the Federal Privacy Act which would waive provisions of that law when it becomes necessary to search out evaders of registration for Selected Service. All citizens should be treated equitably, and we abhor the opportunity which some young men would seize under the "Privacy Act" to avoid possible military service while the great majority of their peers would assume their proper responsibility.

Over two hundred years ago the United States became a Nation due to the willingness to serve and the sacrifices made by its young people. While conditions are different today, the same reliance must be placed on the youth of the 1980's. In the lobby of ROA's Minute Man Memorial Building there is a full scale replica of the Minute Man. At the base of this statue there is an inscription which reads:

"Each Citizen of a Free Government
Owes His Service to Defend It"
George Washington—1783

Mr. Chairman, ROA appreciates the opportunity to appear before you today. I will be pleased to answer any questions you may have.

General Roberts. And in view of the lateness of the hour, I'll make a few other comments.

The question to earlier witnesses and comments by them had to do with what is to be gained from the present action of the administration in asking for registration and for funding not only for the registration itself, but for the purposes of improving the capability of Selective Service.

And I think the answer to that is, No. 1, in our view, permitting the Selective Service System to operate in the event that it's needed. And, very frankly, it is far from being able to operate now because it was stripped down to the bare bones at the direction of Secretary Rumsfeld, or his recommendation, in 1975, and reduced to a mere skeleton.

If we had an emergency tomorrow, next week, or next month, your Selective Service System could not function in a way which would be required.

Part of the funding will be devoted to improving the automatic data processing capability of the Selective Service System and part of it will be used to expand the staff so that they can in fact function.

As far as the registration itself is concerned, it's largely, in my view, symbolic because it doesn't provide for classification and the people would have to be called back subsequently. But it would put American youth on notice that, as a matter of fact, they do have a responsibility to serve the United States in the case of need.

And with regard to how many would participate, we have a fundamental belief in the dedication of American youth to the country. I do not believe for a moment that a large number would ignore this responsibility, nor do I believe that very many would be unaware of the responsibility.

If there's anything that would travel fast in the peer groups of the 19- and 20-year-olds, it would be the decision that they have to register. You can talk about advertising all you want, but the press, both print and broadcast, would certainly cover this, and I can think of nothing hotter being talked about in those circles than this requirement.

So that does not bother me at all about the fact that somebody would not get the word. They would get it. There's not much question about that.

Now, we talk about why has the administration taken this course of action? In addition to what I just said about the need to revitalize the mechanism, all you have to do is look around the world today and see what kind of trouble we're in.

Also, what is being done by the Soviet bloc and by the European powers with regard to military training of their people? I have a reference book that you might find useful. I'd be glad to give it to you, Mr. Chairman, later, if you would like, that outlines in complete detail the requirements of the Soviet bloc.

Specifically, they are training 1 million men every 6 months. That's 2 million a year for the Reserve of the Soviet Armed Forces. That gives them 10 million who have been trained and retrained in 5 years.

This same thing is happening in the other Soviet satellites. Now the other European powers of the west are also requiring their youth to train, including the French, who are not part of NATO in the military sense, and including the Scandinavian countries, who are, I think, champions of civil liberties, by and large. But they also are realistic.

With regard to the male and female issue, our organization has gone on record in support of the President in his request to register women as well as men, even though we do not foresee a requirement to draft women except in a possible extreme emergency, which I hope will never materialize.

We believe that despite pious protestations to the contrary, the Volunteer Army is virtually a disaster; 45 percent of the recruits within the last 2 years have been in category IV and in some cases category V and they're not supposed to be in those categories.

We have to put them in remedial reading. The Army is having to rewrite all the training manuals, in effect making comic books out of them. And perhaps the worst aspect is clear discrimination against the social, ethnic, and racial groups in this country. The middle class of America has turned its back on its duties.

If you had combat in Korea tomorrow morning, 60 percent of the casualties would be black. I would suggest to you that this is racism in a very virulent form. It's merely obvious to see that the Army today is not representative of the American public. I know that we're not discussing an issue about induction, but in my view, such a decision is not far off.

With regard to enforcement, as I've said, I do not believe that we would have a major problem. But I do believe that the Selective Service should have the capability of discovering evadors because it should be equitable to everyone. Why should one person sign and another not?

Therefore, it may be necesary to ask for an amendment to the Privacy Act which would prohibit that act from people using it to evade the law.

Mr. Chairman, that concludes my remarks.

Mr. KASTENMEIER. Thank you, General Roberts.

I'd like to first yield to my colleague, the gentleman from North Carolina.

Mr. GUDGER. Thank you, Mr. Chairman.

General Roberts, am I correct in my understanding that quotas set for voluntary army recruits in recent years have been based on voluntary experience in prior years? We seem in North Carolina to have had a rather high quota compared to some other States in the Union assigned to those recruiters who have the duty of finding young men to serve in our Volunteer Army.

General ROBERTS. Well, Mr. Gudger, I can't tell you specifically what guidance may have been given to those recruiters. I can tell you, however, that popularity of military service—I've got the wrong name. I'm very sorry—the popularity varies by geography and it would be an easy course to follow to raise quotas in the Southeastern part of the country and in Puerto Rico and in the Southwest and in certain sections of Appalachia and reduce the quotas in the North Central part of the country and in New England and in some other areas where it's more difficult to recruit.

Mr. GUDGER. Regardless of what has been the stimulus to the circumstance which you have now described, there is a disproportionate minority group representation in the present Voluntary Army as demonstrated by your comment that if there were a conflict tomorrow, there would be a high casualty of blacks and minority races.

General ROBERTS. Yes; that is not because of the policy of the administration. That is because they have encouraged anyone who is willing to go to join the Army. The American youth are not rushing to be regimented into the Army, especially if they can get a better job somewhere.

So people who have been discriminated against, and this includes still, unfortunately, many blacks or many minorities, Latin surnames, feel that they can get a little better deal in the Army and they're joining it in disproportionate numbers. And they are re-upping in disproportionate numbers, and that's their privilege. But I suggest to you that we're ending up with the total American public being represented by right now I think in the total Army, a majority of minorities.

In other words, if you combine the Latin American surnames with the blacks and orientals, and I think that you're going to find over half the Army in this category.

I don't think that that's a democratic way to run this country.

Mr. GUDGER. Regardless of whether it is the result of spontaneous response to TV and other advertising appeal or whether it's a response to active recruiting policies on the part of recruitment personnel in the field, you're saying that that has been the result and it is the result that has defined and presently describes the existing Volunteer Army?

General **Roberts**. That's right. I get the numbers every week. It's running at about 38 percent black week in and week out, and that's on first-term recruits. And the re-up rates for blacks versus whites is significantly higher for blacks.

That's not to say that they're not good soldiers, but it seems to me that this is not a very good way to have an army in a republic which is supposed to have all citizens representing it.

Mr. **Gudger**. Do you perceive that a registration system uniform in application by age group, would serve as an incentive to voluntary inlistment in a Standby Reserve program if such a program were to be projected and developed and made available to try to come up with that shortage of personnel in this component?

General **Roberts**. I believe that it would, although how much effect is very hard to say. I can point back to experience in the late 1950's, when, of course, Selective Service was operating and the draft quotas were very low, still there were a significant number of people who did join the Reserve and that perhaps was one of the reasons for it.

I can't quantify it, how many would join because of registration alone, but it probably would have some effect.

Mr. **Gudger**. Do you see any form of inducements which might encourage a broader spectrum of application for voluntary enlistment either in Reserve or in Active Army duty?

General **Roberts**. Yes; I think that recent testimony has been along the line of reinstating the GI bill in the form it previously was for the active force. Our organization has asked for a reserve GI bill which would provide meaningful educational benefits to those who would join the Reserve Forces.

The States, incidentally, have done something along this line in different areas. Ohio, for example, offers $1,000 a year to members of the Ohio National Guard for educational purposes and this is an indication of how badly they need some form of inducement to get these Reserve formations up to strength.

Mr. **Gudger**. Your written testimony suggests that the Privacy Act should be amended to allow access to information—social security, IRS, and other records—to assist FBI and other appropriate agencies in the discovery and prosecution of those who failed to comply with the registration law.

Do you have any particular recommendations as to any modifications of the law in this area that you thing might be necessary for registration to work and become the threshold through which military procurement becomes effective?

General **Roberts**. Well, for one thing, sir, I would feel that they should not tamper with census information. I think that this is sacrosanct. I think that if you begin this, the success of future census opportunities may be very seriously weakened.

I believe that it's possible that an amendment to the Privacy Act should possibly open up the records of social security. The IRS, I think, is of less importance. This may or may not be needed, but I think it's possible that it would be.

We feel that the actions of the present administration in what we regarded as overly lenient treatment of evaders is going to add to the possibility that youngsters will feel that they can get away with flaunting the law.

We don't know because we haven't seen what would happen if they were required, but we're a little concerned about that.

Mr. GUDGER. Thank you very much. I yield back to the chairman.

Mr. KASTENMEIER. Thank you. I really just have one or two questions. General Roberts, you prefer a draft, not merely registration, which you say is largely symbolic at this point in time. One of the witnesses suggested that we have had 30 years of conscription in a history of a 205-year old republic.

Is it your view or vision that we would hereinafter as a country have to rely upon conscription as a way of life, as a permanent part of the way we do business in terms of military manpower?

General ROBERTS. Well, I'm afraid that circumstances are vastly different today than they were up and through 1941, primarily because in those days we had thousands of ocean miles separating us from possible foes and history will show that we, in virtually every instance of hostilities, had ample time to build up once they were initiated.

Those days are long gone. In my view, the future of peace in the world depends upon the maintenance of a balance between the Soviet Union and the United States in the strategic field and then a capability of the West to respond to conventional forces where Soviet adventurism bursts forth as in Afghanistan.

Today, we simply do not have that capability. The President can talk very bravely about taking action in the Middle East. In the event that the Soviets would move into Iran, I don't believe that we would be successful if we tried it, for various reasons, and one of the reasons is a weakness in our present Army, although that may not be the major reason.

So I would foresee a requirement to maintain in the future a selective service to round out our conventional forces. And our organization has supported Mr. Montgomery's bill, which doesn't call for induction, but would give the authority to induct up to 200,000 a year into the individual Ready Reserve.

Mr. KASTENMEIER. Put another way, if I wanted to sort of load the question, I would ask: Do you think this country lacks the capacity and the will to raise by volunteer means a defense or an armed services sufficient for its own defense?

General ROBERTS. Well, I have said that I do not believe that the Volunteer Army has been successful in the last 5 years, and anyone who is free to express his view will tell you the same thing.

So if that is our experience, I don't believe that money alone is going to do it and I don't think it's even the way to do it. I don't think that we ought to have an army of mercenaries. I think this country was founded upon participation by citizens for whatever public requirement there is. I believe that's the way to go.

Mr. KASTENMEIER. On behalf of the committee, I want to thank you for your appearance here today. The hour is late and you've been very patient, General Roberts, and we appreciate your appearance.

General ROBERTS. Thank you, sir.

Mr. KASTENMEIER. This concludes today's hearings on draft registration.

[Whereupon, at 5:01 p.m., the hearing recessed, to reconvene subject to the call of the Chair.]

APPENDIXES

APPENDIX I—ADDITIONAL STATEMENTS AND LETTERS

STATEMENT OF ROBERT L. KEALY, ATTORNEY AND LIEUTENANT COLONEL (RET.), MILWAUKEE, WIS.

RECRUITMENT FOR THE U.S. ARMED FORCES

I served four years in the Army as an NCO during the Second World War, and subsequently until retirement as an officer in the Army's JAG Corps (Res).

My view is that no required registration or service in our armed services is needed at this time.

The proposal for registration is put forward by the President on the basis of hostile perceptions of the Soviet Union's activities in Afghanistan, and a series of other recent military and international actions by Russia and countries in league with the Soviets. Just as these hostile perceptions do not warrant the dropping of the SALT agreements (see annex a attached), they do not call for ending the traditional voluntary character of military service in the U.S. Required registration or service must be reserved for nothing less than all-out war when the total population must be mobilized for either military or civilian wartime jobs. The reason for this view is simple: there is no fair way of selecting merely a few for required service. If it is really true that the services cannot get enough high quality and racially mixed recruits under the voluntary system now in effect, then, not some purported random process, but deliberate selection of high IQ college graduates should be employed, to get the high grade individuals needed.

No doubt both proponents and opponents of required registration and possible service want the best armed services this country can put in the field. It is just plain common sense that armed forces composed of individuals selected for required service unfairly and under the necessary spotty enforcement procedures and with a large segment of the country harping on the waywardness of any system devisable short of one for all-out war—such armed forces, I say, are not likely to be successful in defending our country.

Ultimately, the viability and strength of this country lie in the fairness of our institutions and laws, and nothing as blatantly unfair as any step in peacetime conscription should be enacted.

ANNEX A

HOSTILE PERCEPTIONS OF THE SOVIET UNION IN ARMS CONTROL NEGOTIATIONS

The Committee on the Present Danger, self-described as "an [American] nonprofit, nonpartisan educational organization founded in November 1976 by 141 private citizens devoted to the Peace, Security and Liberty of the Nation" (cited from rear cover of the Committee's 1978 pamphlet "Is America Becoming Number 2?" and from which the following material is quoted), identifies the present danger as "the Soviet drive for dominance based upon an unparalleled military buildup" (Foreword).

"The two superpowers have utterly opposing conceptions of world order. The United States . . . sees a world moving toward peaceful unity and cooperation within a regime of law. The Soviet Union, for ideological as well as geopolitical reasons, sees a world riven by conflict and destined to be ruled exclusively by Marxism-Leninism [with] Soviet military power . . . the essential guarantor of expanding [Soviet] political influence" (p. 1).

In the Committee's view Soviet military doctrine and capabilities fully support the coercive role assigned to them by the Soviet government in both the world of conventional and nuclear warfare (p. 3).

"The Soviet goal . . . is not to wage a nuclear war but to win political predominance without having to fight. [We have seen] Soviet pressures for expansion . . . in Eastern Europe, Iran, Greece and Turkey; in Berlin; in Korea, and later in Cuba . . ." (p. 2). "For many years, the principal strategic goal of Soviet policy has been to bring Western Europe under its control [transforming] the global balance of power, and the United States would be left isolated in a hostile world . . . The Soviets regard the Middle East as a most important geopolitical target. They believe that control over the space, the waterways and the oil of the region would be a major and even decisive weapon in permitting them to dominate Europe, Africa, and large parts of Asia . . . In the Third World, the Soviet Union aspires to socialist leadership and supports 'wars of liberation' [requiring] Soviet capabilities to project power throughout the Southern Hemisphere, as well as resources for the support of 'sub-conventional' or guerrilla warfare . . . Stalin probed toward Turkey, Greece, Berlin, and Korea . . . His successors have sponsored wars of far greater magnitude—in the 1973 breach of the peace agreement in Indo-China, for example; in the Arab aggression in the Middle East of October 1973; and the current [1978] campaign in Africa" (p. 4). Today, we may add Afghanistan to the list.

Aside from the bare citation of Communist ideology, geopolitics, and "deep-rooted Russian imperial impulses" (p 1), the evidence it adduces of the current Soviet military buildup, and its interpretations of Soviet international behavior since World War II, the Committee leaves the reader in the dark as to the nature and character and source of this pictured Soviet villainy. If, indeed, the Soviet Union is as bad as it is claimed, it would seem to be futile to attempt to work out arms control agreements with such a government. It becomes necessary, therefore, to attempt to see what lies behind the Committee's wholly negative assessment before even considering what might be a useful arms control agreement with such a country.

Is the Soviet Union just another country in the history of the world's regimes, or does it have a character, or bear a mark, which distinguishes it from even such-dominating regimes as those of Alexander, the Romans, and Napoleon? If so, what is that character, that mark?

A French author in a recent study (Alain Besancon: "The Soviet Syndrome," Paris, 1976, Tr. N.Y., 1978) argues that Soviet Communism does set up a government unique in world history. In his view, it is a jealous god, brooking no rivals (pp 3–40). As such, it is dedicated to destroying civil society (which can claim alternative allegiance) both within its own present borders and on an international scale. By civil society the author means the social community of peasants, industrial workers, intellectuals, national minorities, ethnic and religious groups whose destruction is brought about by the elimination of the portion of their activities and interrelationships which fall outsde the areas government can control. Soviet society thus ceases to be an organic entity and is turned into a mass of isolated individuals unlinked to each other by affinity or common interest, and, hence, unprotected when faced by the power of the state.

Civil society, of course, does not give up without a struggle. Besancon sees the Soviet leaders resorting to a twofold strategy to reach their goal. When War Communism (phase 1) reduces civil society, or some element of it, to the brink of extinction (which in turn threatens the existence of the state), Soviet leaders turn to New Economic Policy (phase 2), a relaxation of ideological power, "and a certain latitude given to civil society to organize as it saw fit" (p 7). Initially, for example, the Soviet leaders left agriculture outside its ideological control in order to save the country from starvation. Domestically Besancon distinguishes about 3 or 4 alternations between the two phases in the Soviet struggle to subdue civil society since the Revolution.

What interests here is the application of this conception of Soviet ideology to foreign policy. To begin with, the ideology which dictates the destruction of civil society in Russia requires its destruction everywhere, and to accomplish this goal the Soviet leaders in their foreign policy resort to the same strategy of alternating War Communism and New Economic Policy. The working concepts of War Communism "are drawn from the doctrine. For example, they include imperialism, class struggle on the international scale, and proletarian internationalism. The means employed . . . are the international communist movement, particularly its specialized organs: the Comintern, the Cominform, the World Federation of Trade Unions, etc. Working alongside these organs are more unobtrusive apparatuses such as those that carry out, within the 'fraternal' communist parties, the information, propaganda, and subversive services, and other functions assigned to the KGB and similar organs" (pp 43–44). In this phase traditional foreign policy concepts, such as are used in arms control agreements, do not apply since the aim here is the destruction of world civil society including world capitalism. The term the West has for this phase is the Cold War.

In the foreign counterpart of New Economic Policy, which we know as detente, traditional international concepts and terms apply, and policy is couched in such phrases as peace and coexistence, national sovereignty, nonintervention in the affairs of other countries, influence and special interests. The means employed are the traditional ones of diplomacy, military and economic exchanges, and all the usual inter-state relationships. As in the case with domestic versions of the phases, the two strands are continuously connected and interacting to the vast puzzlement of the rest of the world.

The first place of Soviet military forces in this system is self-evident. The pressure must be kept on the nongovernable aspects of civil society both at home and abroad, and for this purpose the acquisition and retention of state power is mandateory. It is only prudent to assume from world history that the forces which wish to preserve civil society will resist by all means at their disposal including the use of military measures. The sole function of what is left of civil society is to support the state, and with highest priority, the buildup of the armed forces. The hope is not to use those forces except locally in so-called undecided zones of the world where it is clear those forces cannot be challenged with success (pp 50–54). Soviet forces exist to teach, not to start wars (p 86).

Paradoxically as it may seem, periods of Cold War are less dangerous for the West than periods of detente, for in the former while the Soviet Union seeks local advances rather than world domination, retreating internationally into a shell from which it refuses to cooperate or negotiate. Detente, on the other hand, is diplomacy based upon action and movement on the international scene. It is subtler than cold war, and with its less repressive policy at home and seeming insistence upon peace abroad blunts the vigilance of the West and saps its desire to defend itself. Detente does not imply that the Soviet Union has given up exporting Revolution, but only that it is seeking a delay to assure ultimate success (pp 62–68).

The West's traditional answer to Soviet cold war has been containment. The first great containment was the Elbe river where Western forces at the end of the Second World War halted the Soviets. The response to detente has been negotiation. The Soviet Union invited to enter the concert of powers and to behave like a respectable nation. The problem here according to Besancon is "establishing a common language in which peace and war have a common meaning," but so far this has proved impossible (pp 91–92). The author argues that if the Soviet Union really gave up exporting Revolution, it would be unable to hold on to power at home. According to a common Western view (that of Marshall D. Shulman, for example, in his paper in "Arms, Defense Policy, and Arms Control," ed. Franklin Long et. al., New York, 1976), Soviet ideology as time goes on is becoming "ritualistic" and "attenuated." Besancon takes the opposite view. The ideology is alive and well, but Communist civil societies are moribund. It is civil society that has been attenuated, not the ideology (p 94).

The two prime requisites for successful negotiation are information of the opposite side and the establishment of a symmetry between the other side's world and our own (p. 97). The secretiveness of the Soviet Union is proverbial, and it has to be difficult to establish a common universe of discourse with a country where such basic terms as economy, society, and government itself, not to speak of war and peace, mean different things. The Soviet government, for example, does not fit any of Aristotle's or Montesquieu's categories because neither of them envisioned a country run by a tight little group which in turn is ruled by an ideology requiring the suppression of civil society.

Besançon's final word is that one can negotiate with the Soviet Union, but only by "holding discussions . . . when it is lying, but refusing to discuss when it is sincere" (p. 103). "For obvious reasons, one must negotiate indefatigably with the Soviet government on the concrete level. One must patiently seek agreements—temporary, like all agreements between sovereign states—about frontiers, trade, armaments, exchanges. In the negotiations the parties discuss the same things. They have at their disposal the entire arsenal of lies, tricks, Machiavellianism, in order to attain their goals" (p. 102). All attempts by Soviet negotiators to deal with abstract principles should be resisted because in so doing they are slipping back into the pseudo-reality of their ideology, and in this game the West always ends up war-mongering, intervening unjustly, and interfering with the right of people to self-determination in the name of political or economic imperialism or neo-colonialism (ibid.).

It is instructive to compare Besançon's pro-concrete-negotiations stance with the flat anti-negotiation position of the Committee on the Present Danger. This is all the more remarkable because Besançon paints an even darker picture than does the Committee of the Soviet Union's ideology, military buildup, and international misconduct. Yet we find the Committee in its most recent publication to hand ("The 1980 Crisis and What We Should Do About It," Wash., Jan. 22, 1980) recommending nothing but massive rearmament, world-wide U.S. military presence, and far-flung military alliances with friendly states. From behind such mighty ramparts "this nation and its Allies should then be able to deal with problems in the Persian Gulf and many other parts of the world by firm and prudent diplomacy" (pp. 16–17). What this "diplomacy" envisages is then made clear by the familiar recital of the failed negotiations with Fascism which preceded the Second World War, and the dubious claim is advanced that the Allies could have prevented that war by building up military forces and by carrying out various threatening military actions short of war.

From another quarter support for Besancon's pro-concrete-negotiations view comes from some considerations advanced by Professor Hans J. Morgenthau in a paper in "The Dynamics of the Arms Race" (Ed., David Carlton et al., N.Y., 1975). Morgenthau would agree with the Committee's outlook that history shows that, absent political settlements, as was the case for example, in the U.S.-Canadian boundary accords and the Washington Naval Treaty of 1922, there can be no effective agreements controlling conventional arms. "When you look at the nuclear field you have an entirely different situation. The conventional arms race is fundamentally the result of the discrepancy between available targets and available weapons. In the conventional field the number of actual and potential targets by far exceeds the number of available weapons. . . . When you refer to the nuclear field, you refer to a military economy of abundance where the destructiveness of the available weapons by far exceeds the availability of targets" (pp. 59–60). If this statement accords with the military facts, then here certainly is a concrete practical area where nations of any imaginable ideological persuasion may profitably negotiate and agree.

The history of the nuclear arms control negotiations between the United States and the Soviet Union, as detailed by Strobe Talbott in his book, "Endgame" (N.Y., 1979), is a classic textbook illustration of the conception of Soviet ideology advanced by Besancon. Without renouncing any of their aims of War Communism the Soviets nevertheless agree to deploy no more than 820 MIRVed missiles, whereas without the agreement they would have the capability of deploying as many as 1,300 such multiheaded missiles by 1985. With the treaty the Soviets are held to 10 MIRV's on their biggest missile, the SS–18, and without the SALT treaty they would be able to put as many as 25 warheads on that missile. Similar but smaller increases in warheads on their smaller missiles are likewise given up under the agreement with the Soviets in effect agreeing to limit themselves to 8,000 nuclear warheads. Since under the Morgenthau conception of the nature of nuclear warfare, such weapons are essentially arms without sufficient targets, and since according to Talbott's history the American negotiators admirably held up their side of "lies, tricks, Machiavellianism in order to attain their goals" about these absolutely concrete matters of nuclear armaments, it follows that America should have no hesitation about ratifying SALT, and proceeding with further concrete negotiations dealing with the limitation of nuclear warfare.

All this is not to say that the West should do nothing to guard against, and react short of war to, Soviets moves and ambitions whatever they may turn out to be. But dropping negotiations about concrete matters for an exclusive policy of military buildup and maneuvers, even on the blackest possible assessment of the Soviet menace, is not to be recommended. What the future holds is unknown to every one, including the leaders of the Soviet Union although their ideology may profess otherwise. Perhaps we may be cheered by the thought that world domination by Russia has been foretold ever since the early eighteenth century and has not happened yet.

STATEMENT OF GEORGE KOSKI, REPRESENTING SOCIALIST PARTY LOCAL SOUTH CENTRAL WISCONSIN

CIVIL LIBERTIES AND ADMINISTRATION OF JUSTICE IMPLICATIONS OF MILTARY REGISTRATION

The Socialist Party Local South Central Wisconsin, an affiliate of the Socialist Party USA, opposes military registration. While unlikely to deter the Politburo significantly from moves it may wish to undertake, we believe this measure will have a profound and deleterious impact on American civil liberties. This is not only a pro-conscription measure; it is a pre-conscription measure and thus a giant step toward what the American Civil Liberties Union has described as the 'near-total subjugation of civil liberties' in a military draft. So in this connection we deem it essential to reaffirm our historic opposition to war and militarism, as first enunciated by our immortal comrade and convict, Eugene Victor Debs, who thundered forth his proletarian internationalism during the World War I hysteria: 'I have no country to fight for; my country is the earth, and I am a citizen of the World.' Our other Presidential candidates, Norman Thomas in his day and Darlington Hoopes and Frank Zeidler and most eloquently this year David McReynolds, have continued our resistance to the organized mass violence of the war machine.

If we can stop the war machine right here, we shall have gained a real victory for humanity. If we do not stop it here, it may before long destroy us all.

Statement of Frank Hartmut Horn, Midwest Director, Students for a Libertarian Society

I should like to begin by reviewing the recent history of the draft. In 1973, the draft, after a continuous peace- and wartime presence since 1940, was replaced by the "total force" concept. Active-duty volunteers were to bear the initial brunt of any conflict, with volunteer Individual Ready Reservists available as casualty replacements. This initial use of volunteers in case of war would allow time for induction and training of draftees who were to provide ultimate replacements after massive casualties within the All-Volunteer Force. Accordingly, inductions were terminated and the Selective Service System (SSS) was placed in "deep standby" status. The registration requirement for 18-year-old males continued, but was widely ignored until President Ford discontinued registration as well in 1975. The SSS has retained, however, extensive computer capabilities to provide for speedy registration in the event of a "national emergency" while the President has retained authority to declare such an emergency and register males pursuant to the Military Selective Service Act which has remained on the statute books.

Since 1975, various proposals to reinstate peacetime registration and the draft, sometimes in the form of compulsory "national service," have failed to win Congressional approval. In September 1979, after massive public opposition, the House delayed registration and instead instructed the Administration to study the issue, resulting in a report confirming the Administration's 1979 position that peacetime registration is redundant and unnecessary since no significant time would be gained in getting draftees into training. However, President Carter had changed his mind by the time of his State-of-the-Union address, and suppressed this original report compiled by a task force from the Department of Defense, the Office of Management and Budget, and SSS; a new report confirming the Administration's new position was hurriedly drawn up.

In the fall of 1979, meanwhile, a brave band of Congressmen went beyond the defeat of registration toward actual abolition of the SSS, through the introduction of H.R. 5134 by Rep. Ron Paul (R-Texas), co-sponsored by Rep. Robert Kastenmeier (D-Sun Prairie, WI) and others. The majority of the Congress, however, has not shown any permanent or principled opposition to the draft: it is simply a matter of time and place, and of political expediency. Given the current international situation, it is quite possible that Congress will approve the Administration's funding request for peacetime registration (planned for this summer) as well as his request for permitting SSS funds to be potentially used for actual induction. Since 1973, SSS funds have not been authorized for induction, so that such a move would require additional Congressional action.

Meanwhile, President Carter has further extended U.S. global commitments by threats of military intervention in Yugoslavia and the Persian Gulf, under the "Carter Doctrine." American advisers are being sent to El Salvador. More troop bases are being established in the Middle East. A rapid deployment mobile strike force is being developed. A renewed arms buildup looms. Under the guises of "national interests" and "national security," the Administration has successfully manipulated public opinion to join its call to arms. Given these expanded military commitments, given the renewed cold war mood, given the reluctance to increase the pay and benefits to volunteers, given the adverse age trend resulting in a declining pool of potential male volunteers, given the reluctance to increase the role of women volunteeers, and given continued doubts about the intelligence of recruits, the draft issue is almost certain to recur regardless of Congressional action this year. Further, neither the Congress nor the President are reluctant to impose the draft in the event of war—which seems less remote every day.

Libertarian opposition to all forms of draft registration, draft, or national service is based on the fundamental principle that we all have the inalienable right to pursue our lives in any peaceful manner we choose. This principle entails opposition to any kind of involuntary servitude, no matter what the purpose and no matter how equally the burden might be distributed. The proposed inclusion of women in draft registration simply imposes oppression upon even more people and thus should not mollify us in the least. Likewise, the alternative of civilian service through a program of conscientious objection (CO) or national service still retains the obvious compulsory feature. In wartime, the draft becomes even more onerous with the risk of death in battle, and is no more justifiable than in peacetime.

Human rights are immutable and their timeless validity is not subject to the whims of presidents, courts, legislatures, and popular majorities. Furthermore, rights are not gifts or privileges granted by the state to be somehow "paid back" by forced service. The popular concept of "serving one's country" cannot be translated into a compulsory duty to serve the state.

These human rights also do not in the least conflict with "practical" considerations regarding the dangerous world we live in. Only 30 percent of the present AVF is employed in the actual defense of the U.S. If we were to abandon our interventionist foreign policy of overextended commitments around the world, we could easily rely on fewer high-quality volunteers while increasing national security and reducing defense spending. The draft—standby or otherwise—is only needed for extended, unpopular, aggressive foreign land wars—like Vietnam—where it is difficult to raise unlimited hordes of volunteers. A peaceful, defensive policy of non-intervention and complete free trade would result in more secure access to resources and friendly relations with many countries who now regard us with understandable suspicion. At the same time, deregulation of the energy industry here at home would result in an abundance of domestic energy supplies.

The moral case for draft resistance—civil disobedience—rests on the case for human rights and against unlimited state power especially in its most virulent form of war and mass murder. Laws only have legitimacy to the extent that they protect human rights; other laws are unjust and must be resisted. Only by refusing to cooperate can we actually deny the state the power to dispose of our bodies.

The practical case for draft resistance rests on the recognition that the alternatives are limited, the small legal risks are worth taking, and the potential for breaking down the draft system and even preventing war is promising.

Immigration into Canada is no longer a viable alternative for most—work permits can only be obtained by legal immigrants, who must satisfy numerous improbable conditions. Conscientious objection is not often granted—even during the relatively lenient Vietnam era, 80 percent of CO claims were denied—and brings with it slavery merely without guns. It is rumored that in the future, CO status would be even harder to obtain and the alternate service would be less pleasant.

For many, then, draft resistance will be the only realistic alternative. The severe statutory penalties for resisters and those who counsel resistance (5 years prison and/or $10,000 fine) should not be taken lightly, but the actual enforcement powers of the government in the face of massive resistance should not be overestimated. In the Vietnam era, the huge caseload clogged up the entire judicial system. As a result, only a small fraction of draft resisters were prosecuted and even fewer were imprisoned.

Many will not register due to forgetfulness, ignorance, laziness, or fear. Many will refuse because no CO classification is done at the time of registration. Some will quietly refuse; others like myself will lead active resistance, including sit-ins and pickets at post offices where registration is to be held. The risks of prosecution are higher for the active ones, but our moral commitment against the horrors of war is also correspondingly higher.

The likelihood of massive refusal to register will inevitably result in selective prosecution, probably of activists, dissenters, and perhaps unpopular minorities.

American draft resistance has a long, glorious, and bloody history—beginning with the massive riots during our first draft in the Civil War. Many thousands of people have immigrated into this country to escape the draft in other countries, and many risked their health and their lives to avoid the draft here.

The response to President Carter's State-of-the-Union address in January of this year was immediate. Libertarian, civil liberties, pacifist, religious, and other peace groups had already been working on the issue for a year as part of the Committee Against Registration and the Draft (CARD); CARD stepped up its activities at the local and national levels. Mass rallies and teach-ins flourished everywhere. On February 3, the Libertarian National Committee unanimously endorsed civil disobedience to draft registration, putting the nation's third-largest party on record in favor of draft resistance.

On March 23, following the march on Washington, the National Resistance Committee (NRC) had its first nationwide gathering in Washington, agreeing on a strategy of non-violent draft resistance without ideological divisions. The NRC has obained the endorsement and cooperation of many prominent Vietnam War resisters, including Daniel and Philip Berrigan, David Dellinger, Daniel Ellsberg, David Harris, Karl Hess, Ron Kovic, Fred Moore, and adopted the following statement of purposes:

1. To resist current U.S. preparations for conscription and war by encouraging those of draft age to refuse registation.

2. To sponsor and promote non-violent demonstrations and civil disbedience at U.S. post offices during the draft registration weeks in the summer of 1980.

3. To build a grass-roots movement by collecting pledges of non-registration, distributing literature, holding public actions, forming support groups and working with existing organizations to resist registration.

In February and March, Tom Palmer (national secretary of CARD) and I criss-crossed the midwest urging refusal to register if Congress passes the appropriations. Everywhere, the response was highly favorable. In this post-Watergate period, young people have a healthy distrust of government and understand that "mere" registration leads to a later draft. Signing the "simple card" is correctly perceived as signing one's life away.

The state serves a minority of special interests at the expense of the general public. This tyranny continues only as long as the people remain ignorant of their true interests and are bamboozled into thinking that government programs are intended for their benefit, or that the state's existence is inevitable and unalterable. Every coercive state depends on this passive cooperation of the majority. No state can continue its tyranny in the face of active mass opposition. As we embark on the renewed slavery of the draft, the spirit of the abolitionists who fought slavery in the last century will be rekindled with support from all segments of the population for our young "runaway" draft resisters.

A CALL FOR

RESISTANCE

How serious is your opposition to the draft? Rallies and demonstrations are important expressions of opposition, but in the end, only one thing matters: *will you register or will you resist?* And if you choose to resist, are you willing to face the legal risks involved?*

The National Resistance Committee is a network of individuals and organizations who are committed to stopping draft registration. Our purposes are:

1. To resist current U.S. preparations for conscription and war by encouraging those of draft age to refuse registration.

2. To sponsor and promote non-violent demonstrations and civil disobedience at U.S. Post Offices during the draft registration weeks in the summer of 1980, and

3. To build a grass-roots movement by collecting pledges of non-registration, distributing literature, holding public actions, forming support groups and working with existing organizations to resist registration.

The Carter administration proposes to begin face-to-face draft registration of all 19-20 year old males at U.S. Post Offices during an initial two week period (the specific dates have not been announced yet). On these registration weeks hinge the future of the draft in this country. If the mass sign-ups are a success, the draft will become an entrenched part of American society, with ominous consequences for peace abroad and freedom at home. If, on the other hand, young people refuse to register, and if resistance is organized and widespread, the draft will fail. That is why the National Resistance Committee is committed to unifying *all* draft opponents around a common and narrowly defined goal: stop registration.

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* Military Selective Service Act, 50 U.S.C.A. App §453 *Registration* ". . . it shall be the duty of every male citizen of the United States, and every other male person residing in the United States, who, on the day or days fixed for the first or any subsequent registration, is between the ages of eighteen and twenty-six, to present himself for and submit to registration at such time or times and place or places, and in such manner, as shall be determined by proclamation of the President and by rules and regulations prescribed hereunder."

50 U.S.C.A. App §462 *Offenses and penalties* ". . . any person who . . . evades or refuses registration or service in the armed forces or any of the requirements of this title (said sections), or who knowingly counsels, aids, or abets another to refuse or evade registration or service in the armed forces . . . or any person or persons who shall knowingly hinder or interfere or attempt to do so in any way, by force or violence or otherwise, with the administration of this title (said sections) or the rules or regulations made pursuant thereto, or who conspires to commit any one or more of such offenses, shall upon conviction in any district court of the United States of competent jurisdiction, be punished by imprisonment for not more than five years or a fine of not more than $10,000, or by both such fine and imprisonment."

However, during the Vietnam war the sentences for SSS convictions averaged less than two years and many non-registrants were never prosecuted. Although we are not sure of the future policy that the administration may pursue regarding draft resisters, anyone who violates this law may face arrest and imprisonment.

The National Resistance Committee opposes all existing conscription laws and any draft legislation pending in Congress. We declare in advance that we will not accept, nor submit to any compulsory military training.

The Resistance Committee embraces individuals of all political persuasions. Our point of unity is an action — resistance — not an ideology. We have obtained the endorsement and cooperation of many prominent resisters and opponents of the Vietnam War — Daniel and Philip Berrigan, David Dellinger, Daniel Ellsberg, David Harris, Karl Hess, Ron Kovic, Fred Moore, and others — but our main concern is with reaching draft age young people, and providing them with the knowledge and moral support to resist.

Toward this end, the National Resistance Committee publishes a newsletter *Resistance News*, and an organizing manual. The organizing manual explains how to set up local resistance support groups, how to handle legal defense, how to get media publicity, civil disobedience tactics, and more. The Committee also distributes pledge cards for draft age people to sign and carry with them. The pledge states, "As a person of draft age, I pledge to refuse to register for conscription. I understand the legal risks of this action and I am willing to take them." These cards help build resistance by providing an excellent point of departure for discussions or resistance, and also help young people feel secure in the knowledge that a substantial number of others are with them. Our goal is to collect at least 100,000 of such pledges.

The National Resistance Committee is confident that a strategy of concerted resistance can bring conscription to a halt. The draft, like all forms of tyranny, depends on the compliance of people who become victims through their tacit obedience to immoral laws. By withholding our cooperation, boycotting registration, and standing in solidarity with thousands of other resisters, the SSS law will be made inoperative and unenforceable.

The success of the Resistance Committee relies on grass roots support and local initiative. If you are serious about stopping the draft, get in touch with us soon. We can supply you with materials, information, organizational support, and, when possible, speakers for local support groups.

We Will Resist

Come to an informal Resistance Workshop with David Harris, meet resisters from other states, share good times, etc. Anyone who wants to learn more about resistance strategy is welcome to attend. This Sunday, March 23, at 11:00 AM at the United Methodist Building, 100 Maryland Avenue N.E. (Maryland Ave. & First Street, N.E.) in conference room #3.

National Resistance Committee
P.O. Box 1433
Washington, D.C. 20013

☐ I want to be put in contact with a local resistance group.
☐ Send me ______ of these leaflets.
☐ Send me ______ pledge cards.
☐ I want to organize a local resistance support group; send me one of your organizing manuals. (Please include $2)
☐ I want a speaker for a group of draft age young people.
☐ I want to contribute to the National Resistance Committee.
Enclosed is _____$10 _____$25 _____$50 _____$100.

NAME ______________________________

ADDRESS ______________________________

PHONE ______________ Are you of draft age? ________

Comments & suggestions: ______________________________

STATEMENT OF WILLIAM D. FEENY, VERONA, WISCONSIN

Mr. Kastenmeier, this is a very special day for me because today is my fiftieth birthday. I cannot think of a better way to celebrate than to have this opportunity to make my voice heard as I speak against the proposed military registration and draft. If anything I say here will contribute to preventing our younger generation from going to war, then all the experiences that have made up the fifty years of my life will have had real meaning.

How often we hear the phrase that we must operate "from a position of strength." This is simply another way of saying that if we carry a big enough club, we are better able to intimidate others to do our will by threatening them. But if we support a powerful military force, we will eventually have to justify having that force by using it. And so, war is not forced upon us, it is created by us. Having a powerful military makes it that much easier for diplomacy to fail, because it makes war thinkable. It makes war a tool of foreign policy, available for use. Diplomacy should, and must be conducted from the position that war is unthinkable.

Most Americans have a romanticized concept of war. They don't know what it is really like. If they did, they wouldn't be so willing to send their kids off to it as if they were going to scout camp for two weeks. They think the military is really an opportunity to learn a technical skill and put away money for college as the obscene recruiting ads tell us. But war is really my cousin Dick, bailing out of his falling B–17 and bleeding to death under his parachute because the propellers had gotten his legs. And war is really the aging patients in military hospitals and mental institutions throughout the nation, who were once young but had their futures stolen because of events they did not create and could not control. The law and society said they had to serve their country.

The President seems to believe that war might, in some way, be a solution to present world problems. War does not solve problems, but it does create the problems of the future. We are in the current economic crisis because we are now paying the costs of the Vietnam war. War is wasteful of human life, materiel and money.

The President assures us that registration does not necessarily mean there will be a draft. But registration makes the steps that lead to war easier to take.

The President tells us that our national security is at stake. Have we so soon forgotten Richard Nixon, who authorized so many illegal activities in the name of national security?

We must protect our "vital interests" in the Middle East, which means "oil." Ironically, war uses more oil than any other activity. And that oil it does not use, it seeks to destroy so that others cannot use it against us. It is insanity to think that war is a viable option. We must resist the make-war mentality.

I have not yet heard of any corporate executives being asked to give up or even cut down on their travel. But my sons and daughter will be asked to serve in the military so that they will not be deprived of their oil.

I see a very real trend in this country which has parallels in Nazi Germany during the thirties. That is the raising of national patriotism to the level of a religion. We are supposedly a christian nation—I mean founded on Judeo-Christian ethics. As a Christian, I look to the Sermon on the Mount for moral guidance in my daily living, not to the President. I am happy to be an American, but I do not worship this country, nor its flag, nor its ideology. I served in the Air Force during the Korean war. I was young then, and naive. Today I am older and (hopefully) wiser and not so easily taken in by rhetoric. Registration must be resisted. If it is to become a reality, then the older generation, my generation, the generation which causes and profits from war must pay the price. Not our youth.

Thank you, Mr. Kastenmeier, for the opportunity to speak on this subject of national concern. You have historically been the voice of sanity and reason in a nation which sometimes seems to have gone mad. You have never lost sight of the fact that we are a nation of human beings. In a world of human beings. I hope you will continue working quietly and speaking loudly to make this a safer, if not better place to live and raise our children.

PROGRESSIVE STUDENTS COALITION,
NORRIS UNIVERSITY CENTER,
Evanston, Ill., April 11, 1980.

Chairman KASTENMEIER,
U.S. Congressional Hearing,
Madison, Wisconsin

TO THE CONGRESS OF THE UNITED STATES: The majority of students at Northwestern University support world peace, and do so by opposing registration and the draft. A large number are now resisting the effort to institute registration and these people are strongly committed to this resistance. Opposition is not limited to students. Many faculty members and associated members of the religious community are involved or are supportive, and many were themselves involved in the anti-war movement of the Viet Nam era. Indeed, this anti-war sentiment has carried over into the awareness of the entire academic community today.

The legacy of the resistance movement demonstrates itself through the participation of 1000 people in an anti-draft rally at Northwestern University on May 10, 1979, before the President's call for registration. Since the State of the Union Address, the movement has gathered greater support, as the unexpectedly large turnout for Chicago area events, the growth of the Midwest Coalition Against Registration and the Draft, and the massive support for the Washington, D.C. rally on March 22, 1980 show. The Washington, D.C. rally also shows that the current anti-war movement is growing faster than that of the Viet Nam era. Instead of the expected 10,000 demonstrators, more than 30,000 war and draft resistors participated, and all of this is before registration has been enacted.

If registration is funded and begun, we predict that the anti-draft movement will soon reach proportions comparable to the movement during the Viet Nam War. In this case, one can expect firm and widespread resistance from the academic community, and in particular the Northwestern student body. One can assume that, of the millions of persons affected by registration, tens of thousands will disobey and not cooperate with registration each year, a number matching if not exceeding the present case load for our federal courts. Tens of thousands have already shown a strong commitment for peace and resistance to any move towards the draft, and the number will only increase if registration is approved. The dedication of many resistors at Northwestern, specifically, indicated that these resistors will take strong action if there is an attempt to proceed with registration.

We would like you to be aware of this public sentiment as you consider registration funding proposals. We emphasize the great cost that resistance will entail for the federal government in addition to registration allocations. We urge Congress to oppose registration as being detrimental to the interests of the government and the citizens of the United States.

Respectfully submitted,

NORTHWESTERN UNIVERSITY COALITION
AGAINST REGISTRATION AND THE DRAFT.

SOME OBSERVATIONS FOR CONGRESSMAN KASTENMEIER'S HEARING RECORD ON REGISTRATION

As an American who has spent the past 16 years studying and teaching in and about North Africa and the Middle East, I wish to state, thanks to the medium of Congressman Kastenmeier's hearing concerning registration, my unequivocal opposition to the resumption of registration, which would herald the reinstitution of the military draft.

The situation in the Middle East has prompted Pres. Carter to call for registration. Yet, it makes no sense to me to oblige young people to learn the science of war at a time in their lives when they could be,

(1) Taking a semester of Arabic in college,

(2) Spending a Jr. year abroad in Egypt or Lebanon,

(3) Learning the culture, history, or religions of the Middle East in a General Education course,

(4) Sampling a Middle Eastern cuisine in their university community,

(5) Discussing Middle Eastern politics with students from that region, in their student unions,

(6) Attending symposia, workshops, and other forum activities on the Middle East, sponsored by groups in their university community,

(7) Learning Middle Eastern music and folklore, because of one proximity of cultural proponents.

Through the YW-YMCA, their church, or their college or university, young people may choose to do volunteer service in the Middle East, to further their studies there, or to teach there.

In such ways (all the above have existed or do exist) is understanding fostered between Americans and the peoples of the Middle East. To propose the science of war when the arts of peace lie fallow, and indeed beg cultivation, is worse than an anachronism of nineteenth-century saber-rattling.

Such a proposition seems to me to be downright evil.

Thank you,

JEAN HARBER, Ph. D.,
Arab-American Friendship,
Madison, Wis.

HARRINGTON & HANSEN,
Attorneys at Law,
Rockville, Md., June 5, 1980.

Mr. ROBERT W. KASTENMEIER,
Chairman, Subcommittee on Courts, Civil Liberties and the Administration of Justice, House Judiciary Committee, Washington, D.C.

In accord with our conversation May 22, I submit the attached statement pursuant to hearings on the military service section of H.R. 6915. The statement is my own and does not necessarily reflect the view of the law firm.

I hope it is in time to be included in the printed record, but in any event it be reviewed by yourself and incorporated in appropriate form for consideration by members of the subcommittee.

Thank you for your kind interest.

Very truly yours,

SHELDON D. CLARK.

Enclosure.

STATEMENT OF SHELDON D. CLARK OF SANDY SPRING, MD.

My name is Sheldon D. Clark, a lawyer. I respectfully recommend that the provisions of Section 1314, title Avoiding of military or alternate service, be made more precise and less severe. (H.R. 6915 print of April 25, 1980).

I speak to the military and alternate service provisions because of my experience in counseling young men who faced the draft during the Vietnam War years, a time of grave moral decision for them, and because I have been defense counsel in several Federal Criminal cases representing young men indicted under the draft. My 36 years as a lawyer have included 7 years as an assistant county prosecutor and additional years as an assistant attorney-general of the State of Ohio and an assistant law director of the City of Cleveland, primarily in civil law.

It is serious to brand a young person a felon because a felony record acts to bar getting jobs. It can be justified, at best, only in time of war. Furthermore, the years of youth should not be truncated by imprisonment more than 1½ years, a penalty sufficient to deter violation of registration and draft laws.

Accordingly, paragraph (b) of section 1314 should be changed as indicated:

(b) An offense under this section is—

(1) a class E felony if the offense is committed during a time of war or;

(2) a class A misdemeanor if the offense occurs at any other time.

I note that under section 3502 a heavy fine, up to $250,000 could be imposed in wartime and $25,000 for a misdemeanor, although we can assume a judge would not deem a fine appropriate or practical against the young in most cases.

Were "wartime" restricted to periods of actual massive exchange of gunfire and bombings it would be definite, but "wartime" has been extended by Presidential proclamations, not extensively publicized in the past, for various periods. The purposes have been to cut off the flow of sinews of war or to prepare for a possible conflict. For commercial and legal purposes "in time of war" has been extended by Presidents' proclamations long after the guns were silent. A Presidential proclamation may permit a legal determination of whether the offense occurred "in time of war" and so impose a felony penalty. However, the time of "national emergency" is not necessarily a distinction from much of peacetime, discernable to either youth or judges. A "national emergency" should not be the basis for any penalty because it is too vague a concept. "Any other time" (i.e. other than wartime) is at least clear and can ground a misdemeanor.

Peacetime conscription is repugnant in a free country. Congress cannot foresee the seriousness of the crime to which it is asked now to attach a penalty. The seriousness depends on whether the registration and draft is to defend the 50 states against an aggressive attack (in which event volunteers would be numerous and conscription with penalty hardly necessary), or to wage a foreign military adventure, such as America in Vietnam, where resistance to the draft has been great. These considerations dictate prudence and a conservative approach is writing a penalty in advance into section 1314.

SHELDON D. CLARK,
Sandy Spring, Md., July 9, 1980.

Mr. ROBERT W. KASTENMEIER,
Chairman, Subcommittee on Courts, Civil Liberties and the Administration of Justice, House Judiciary Committee, Washington, D.C.

Inasmuch as registration for possible military service is now divorced from a draft, which may or may not be enacted by Congress in the future, the penalty for failure to register should be divorced also from the failure to respond to the draft.

Today's penalty which remains as written in the Selective Service Act of 1967 (wartime) is excessive for a mere failure to register under present peacetime conditions, with no authority in the President to draft young people. The penalty is 5 years in prison and $10,000 fine.

Furthermore, the term "national emergency" is amorphous, unless you are an avid reader of the Federal Register, and hence of dubious utility in a criminal statute.

Accordingly, recognizing your leadership on justice in the field, I hope you might introduce a bill to provide a separate penalty for failure to register as a Class A misdemeanor, or maximum of 12 months, during any time other than a war declared by Congress.

Thus, in place of the 5 years and $10,000 as a penalty at all times, war and peace, in 50 USCA 462, and altering Section 1314 of Criminal Code Bill H.R. 6915 (as written Apr. 25, 1980) as follows:

Condition	Sec. 1314	Proposed
Registration:		
Wartime	D—3 yr. and 4 mo.	D—Same.
National emergency	do.	Eliminate category.
Any other time	E—1½ yr.	A—misdemeanor all times except wartime.
Draft:		
Wartime	D—3 yr. 4 mo.	D—Same.
National emergency	do.	Eliminate category.
Peacetime	E—3 yr. 4 mo.	E—Same, except covers all times other than war.

Inasmuch as the Crime Code is not likely to pass this session and amending the Selective Service Act is a province of the House Armed Services Committee, I am sending a copy of this letter to Mr. Bob Carr of Michigan, attention of aide Bob Sherman. Hopefully, Mr. Carr and yourself can support each other.

Your truly yours,

SHELDON D. CLARK.

MENNONITE CENTRAL COMMITTEE,
Akron, Pa., June 16, 1980.

Re Mennonites and draft legislation.

Hon. JOHN CULVER,
U.S. Senate.
Hon. MARK HATFIELD,
U.S. Senate.
Hon. ROBERT KASTENMEIER,
House of Representatives.

For nearly four hundred years since its origin in Europe the Mennonite church has believed that Jesus Christ forbids his followers to participate in war or take human life. In this the Mennonites identify with the church of the first three centuries following the birth of Christ, which was universally pacifist.

During World War II some 5,000 Mennonite men did alternative service in Civilian Public Service camps. While this arrangement for conscientious objectors was in many ways imperfect, we are grateful to the government for its effort to improve upon the World War I situation in the recognition of conscience and the expression thereof. The I-W arrangement of the 1950's through the early 1980's recognized various types of civilian work in lieu of military induction.

With the "advances" of the past three decades in military technology, including particularly the invention, use, and stockpiling of nuclear weapons, we are conscious that the human race has entered a new era in which the futility of war may become obvious even to those who have believed that war is a tragic necessity in the pursuit of a higher good. The discovery of this truth, however, will not be useful if it comes too late.

In this historical context we believe that the task of repudiating war and the threat of war has a new urgency for Christians and all people of good will. We have observed with grave concern the recent escalation of bellicosity in the rhetoric and actions of our national leaders. The pressure to restore the draft is a signal that the nation is threatening war and preparing for it.

Representatives of the Mennonite church have met in two national meetings this year to discuss the church's response to the moves to resume the draft. An assembly on the draft and national service was attended by 400 persons in Goshen, Indiana, on March 27-29, 1980. A committee on the draft composed of twenty-three persons met in Chicago on May 22. At these meetings the historic Mennonite teaching that Christians cannot participate in war and the support of war was affirmed. The example of Jesus Christ, who loved his nation deeply, but would not kill for it, was reviewed.

In the May 22 meeting the following principles were affirmed. We appeal to you to consider these concerns and to use the powers of your office to implement them in public policy.

1. We believe that conscientious objector status should be granted to all persons who by reason of sincere conscience oppose participation in military training and war.
2. The right of the registrant to appeal decisions regarding classification should be stated, along with the provisions for an appellant's right to counsel, transcripts of hearings and procedural rights.
3. Provision should be made for alternative service under civilian supervision.
4. The service programs of church denominations and agencies should be recognised employment to fulfill the alternative service requirement.
5. Church-sponsored voluntary service programs should be permitted to function without change where those programs are used to meet alternative service requirements.
6. Affirmative action should be taken by the Selective Service System to insure that a disproportionate number of minority and poorly educated youth are not included, and that information on conscientious objection and alternative service provisions should be made available by the Selective Service System to the entire public.
7. Persons whose consciences forbid them to register should be dealt with in a manner that is appropriate for individuals of high principle, such as a period of probationary service instead of a prison term.

I want to express the appreciation of our delegation for the opportunity to visit your office today. May God give you wisdom and strength for your work.

Sincerely,

PAUL LANDIS,
Chairman,
Mennonite Central Committee U.S.

Enclosure.

PEACE, WAR,
AND
SOCIAL ISSUES

1968

PEACE, WAR,

AND

SOCIAL ISSUES

A Statement of the Position of
the Amish Mennonite Churches

Officially adopted by the ministerial body of the Beachy Amish Mennonite constituency (by unanimous vote, with more than seventy ordained men present), assembled in regular annual meeting, at Wellesley, Ontario, Canada, April 18 and 19, 1968.

Introduction

We believe that all matters pertaining to godliness and eternal life are fully centered in the Person and teachings of our Lord Jesus Christ. These teachings being the very core of the New Testament, it is evident that every faithful disciple of Jesus Christ must be fully committed to keeping our Lord's commandments with no reservations. Thousands have lived and died in loyalty to these commandments in spite of persecution, despoiling of goods, and even death, claiming the promise of Jesus, "Be thou faithful unto death, and I will give thee a crown of life" (Rev. 2:10).

Due to troubled world conditions and frequent misunderstandings we sense the need for a fresh expression of our Biblical teaching and heritage, reemphasizing discipleship and faith in God, as set forth and practiced by the Apostolic Church, renewed in Reformation times in Switzerland in 1525, and upheld by the Amish Mennonite and other historic peace churches to this day.

I. Role of Government

We recognize government to be duly ordained and instituted of God. To them is given the sword (Romans 13:4), "for the punishment of evildoers, and for the praise of them that do well" (I Pet. 2:14). The Scriptures teach that it is God who raiseth up whom He will and putteth down whom He will. Psalm 75:7; Daniel 4:32.

We believe that church and state are separate from each other, both in organization and function. The church finds its area of responsibility in the spiritual and moral realms of life; the state in the civil and political.

The state, we believe, has no Biblical authority to interfere with the church in her spiritual responsibility and function: vice versa, the church must not resist, hinder, or obstruct the state in her political function.

As for the Christian's duty to the state, the Bible teaches the paying of taxes (Romans 13:6), giving honor to whom honor is due, and to pray continually for all in authority.

We do invoke the blessings of God

upon our national leaders and are thankful that under their administration laws have been made in consideration of the Christian, who must always exercise a conscience void of offense.

II. Military Service

Regarding war, revenge, or defense by armed force, we believe and confess that the Lord Jesus has forbidden His disciples all revenge or resistance by such means, having commanded us to return good for evil (Matt. 5:39-44), to "put up the sword into the sheath" and, as the prophets foretold, to "beat them into plowshares." Rom. 12:14; I Pet. 3:9; Isa. 2:4; Micah 4:3. See also *Dortrecht Confession, Article XIV*.

According to the Scriptures it is inconsistent for Christians to participate in military service, whether combatant or noncombatant, whether in defense or offense, for Christ has commanded us to love even our enemies.

Nonparticipation in armed conflict finds its positive expression in doing good, such as giving financial aid to the distressed and needy, feeding the hungry, clothing the naked, and seeking to overcome evil with good.

In the event that our country should become involved in war, the Bible instructs us to maintain a spirit of Christian love and goodwill, avoiding hatred, and hysteria, being obedient to all governmental laws and regulations except in cases where they are in conflict with Scriptural teachings. "For the Son of man is not come to destroy men's lives, but to save them" (Luke 9:56).

If need be the Scriptures require us to flee, or suffer the spoiling of our goods, rather than to inflict injury even on an enemy. Matt. 10:23. We are also to turn the other cheek, rather than to retaliate. Matt. 5:39; Rom. 12:19.

III. Civil Defense

For reasons cited above we cannot participate in the following:

1. We cannot bind ourselves to Civil Defense organizations (whether local or national), nor to organizations (such as YMCA or Red Cross) which in wartime become an active part of the war effort.

2. We cannot assist in the financing of war operations by means of bonds or voluntary contributions, and so forth.
3. We cannot knowingly participate in the manufacture of war munitions and weapons, either in peace or wartime.
4. We can have no part in military training schools and colleges or any other form of peacetime preparation for war service.
5. We must abstain from propaganda, agitation or activities that tend to stimulate war hysteria or ill will.
6. We must avoid excessive wartime profits. If such come to our hand they should be conscientiously donated to charitable purposes.
7. In the event of an armed invasion of our land, we cannot aid or assist the fighting forces in such a manner as to facilitate the destruction or death of any man, whether friend or foe. For Christ has commanded to love our enemies.

IV. Political Involvement

Christ's kingdom is not of this world (John 18:36), and His disciples are "strangers and pilgrims on the earth" (Heb. 11:13). "For our conversation is in heaven" (Phil. 3:20), and it is to that country we owe supreme allegiance. Therefore we believe that political involvement in this world is inconsistent with our profession.

As Christians who subscribe to Biblical nonresistance we cannot serve as magistrates. We cannot participate in a system that bears the carnal sword, "for the weapons of our warfare are not carnal" (II Cor. 10:4). Nor can we participate in political campaigns, rallies, and elections, for by so doing we would identify ourselves with the system.

Since God "ruleth in the kingdom of men, and giveth it to whomsoever he will, and [sometimes] setteth up over it the basest of men" (Daniel 4:17), we believe the fervent prayers of one Christian can do more good than hundreds of Christians offsetting one another's votes at the polls.

"I exhort therefore, that, first of all, supplications, prayers, intercessions, and giving of thanks, be made for all men; for kings, and for all that are in authority; that we may lead a quiet and peaceable life in all godliness and honesty. *For this is good and acceptable in the sight of God* our Saviour" (I Tim. 2: 1-3). See also *Schleitheim Confession.*

V. *Civil Rights*

We believe that civil rights and equal treatment should be the right of all citizens, *irrespective of race.*

However, we do not believe that organized marches, sit-ins, mass demonstrations or other coercive methods are the Christian way of solving the problem. Nonviolent coercion is after all a form of external force, frequently with intent to harm through psychological undermining. Therefore we disassociate ourseves from any and all protest demonstrations, peace marches and other similar activities.

A more effective and certainly more Scriptural approach would be for every nonresistant Christian to demonstrate, in constant day by day life and testimony, the untainted principles of peace and love as taught by Jesus in Matt. 5:38-48. The same principles are taught throughout the New Testament, as well as by the very life of Jesus and His disciples. Matt. 7:12; 10:22; Luke 6:31; Rom. 12:14, 19-21; I Pet. 3:9.

We begrudge no one the civil liberties upheld by the *social gospel,* but we believe the Christian's weapon is the spiritual Gospel which points the way to freedom from sin. Unless we can lead men to spiritual liberty and eternal life through salvation in Christ Jesus, any guarantee of legal and rightful comforts in this life is at best only temporary.

Among other Christian duties we stress the following:

Love your neighbor as yourself, be he friend or foe.

Relieve physical needs with material aid.

Avoid all bitterness and agitation.

Present Christ in word and deed.

VI. The Christian's Role in Race Relations

God "hath made of one blood all nations of men to dwell on the face of the earth" (Acts 17:26). Therefore all people are essentially one people. Some are underprivileged and consequently less developed. But the idea of superior versus inferior races is man-made and condemned of God.

"God is no respecter of persons." By the blood of one and the same Saviour has He redeemed unto Himself of all nations and races "WHOSOEVER believeth in him" (John 3:16).

In Christ there is only "one fold, and one shepherd" (John 10:16), "one body, and . . . one Lord, . . . one God and Father of all" (Eph. 4:4-6). "There is neither Greek nor Jew, . . . Barbarian, Sythian, bond nor free: but Christ is all, and in all" (Col. 3:11). "For we are members of his body, of his flesh, and of his bones" (Eph. 5:30); and in Him "we are members one of another" (Eph. 4:25).

Therefore we believe it is our duty, and we resolve by God's grace:

1. That we confess our sins, and the sins of our race collectively, for having treated certain other races as though they were basically inferior.

2. That we recognize restitution as an essential part of confession, and therefore seek opportunity to do all we can in restoring to proper honor the victims of racial discrimination. This may mean the way of the cross, embarrassing inconveniences, the risk of misunderstanding and even persecution, as we seek to exercise love to a rejected race, family, or person.

3. That we recognize passive acceptance of prevailing customs of discrimination as a violation of the Scriptural principle of nonconformity to the evils of this world.

4. That we seek to cleanse our speech and thoughts of any words, sayings, stories or ideas that tend to foster racial or any other kind of prejudice.

5. That as Christians we recognize the impossibility of enjoying oneness *with* Christ without admitting a oneness *in* Christ with all others who are likewise in Him, irrespective of race or color.

6. That we constantly seek, in business and social contact, in religious teaching and spiritual fellowship, to be faithful "ambassadors for Christ," whose redemptive love transcends and triumphs over personal and racial barriers alike.

VII. Our Position on Indrustrial, Labor, or Agricultural Unions

We believe that the principles of peace and nonresistance apply to every phase of life. Although nonresistance is a negative word, the doctrine is basically positive, accompanied of course by the necessary negatives. See Matt. 5:38-48.

We recognize that industrial and labor unions have brought about great improvement in the working conditions and salaries of their members. But we see also the vicious cycle created by resorting to force and power. Using evil to fight evil multiplies evil.

Although large, impersonal corporations may not be accustomed to the brotherly approach (Rom. 12:10), we believe that most responsible officials will still respond to an appeal on the basis of mutual interest, social respectability, and good reason. Even if this fails, we still cannot have any part in, or contribute to, through organizational involvement and financial support, the exercise of mob tactics and actual violence frequently resorted to by such unions. The Bible teaches a better way. See Matt. 7:12; I Pet. 3:9; Eph. 4:31, 32; II Tim. 2:24.

"Do violence to no man" (Luke 3:14). "Not that we are sufficient of ourselves . . . ; but our sufficiency is of God" (II Cor. 3:5). The right of vengeance is His, not ours. Rom. 12:17, 19.

These and many other passages of Scripture teach principles not adhered to by unions, yet binding upon the Christian. We, who subscribe to the above stated principles, cannot bind ourselves to any membership agreements or contracts that would involve us in the use of methods or practices contrary to New Testament teaching. It would constitute an unequal yoke, which is expressly forbidden. II Cor. 6:14.

Therefore we strongly urge:

1. That our members seek employment where union membership is not required.

2. That farmers likewise refrain from membership in farmers' unions, which also thrive on coercive and sometimes destructive methods.

3 That if and when unions *do* take control, and if employment or market is restricted to union members, we recommend a transfer of employment or market.

Beyond this we see the possibility of one other alternative: namely, an agreement, or "Basis of Understanding," such as, or similar to, the one prepared by a Mennonite General Conference Committee on Industrial Relations and approved by the international officials of both the American Federation of Labor (A.F. of L.) and the Congress of Industrial Organizations (C.I.O.). These agreements provide that Mennonite employees will:

"(1) Contribute to a specified cause, usually some charitable or benevolent cause, a sum of money equivalent to the amount of dues paid by union members.

(2) Refrain from interference with or resistance to union activities.

(3) In case of conflict, resulting in a strike or similar action between the union and the employer, maintain an attitude of sincere neutrality.

(4) Abide by the regulations of the shop and union with regard to wages, hours, and working conditions [as long as such regulations do not violate Biblical principles].

The agreements provide that the union, on the other hand, will excuse the nonresistant employee from membership in the union, payment of union dues, attendance at meetings, and other union activities . . ." See *War, Peace, and Nonresistance*, pp. 285, 286.

"Prove all things; hold fast that which is good" (I Thess. 5:21).

STATEMENT OF GOD IN CHRIST, MENNONITE (HOLDERMAN CHURCH)

We have viewed with deep concern the prospect of a renewal of conscription. This is not alone because of its particular implications for us, especially for our youth, though these are of serious dimensions, but also because we see it as part of a progression in which society is becoming increasingly violent. Conscription does impose its own specific problems, and we have taken some measures to increase our readiness to respond to such a development, should it come about.

There has been, through the last several years, and increased emphasis on the principle of peaceful nonresistance according to the Scriptures in our teaching and preaching. In our general meetings, such as the annual business meetings, we have significantly increased the time given to consideration of these matters. We have attempted to maintain an awareness and concern among our young people on these issues. Nearly all of them have filled out and filed copies of Form 1, Record of Conscientious Objection to War. Activities that show a spirit of service have been encouraged and promoted.

Attention has been given to the question of an alternative service program, should conscription be initiated. In that case, we would deeply desire the privilege of placing the draftees in rebuilding projects such as we have in Wichita Falls, Texas and in the Dominican Republic, or in a health care and child feeding program that we have in Haiti. Should there be a sudden need for such a thing, we could place about twelve young men quite quickly. We would think in terms of expanding these units as long as possible, if necessity required it. We would intend to accommodate all our young men in church projects if possible. We have not given much consideration to the placement of young women if women should also be drafted, though we have projects where we could employ them.

We have never really considered non-cooperation or nonregistration for our young men. We still feel that it is a generous consideration on the part of our government to extend the concession to conscientious objectors of not participating in the military program. We believe that it should be highly appreciated, and that if an alternative is offered us that we can live with in time of conscription, we need to accept that. If the situation should become such that we could no longer in a clear conscience give an alternative service, we would expect to come to that decision on a conference basis. We would want our response to be a united one in which every one takes the same way.

P.O. Box 127,
Oakland, Calif., April 21, 1980.

HON. ROBERT KASTENMEIER,
House of Representatives,
Washington, D.C.

DEAR REPRESENTATIVE KASTENMEIER, I understand that the House Judiciary Subcommittee on Courts may soon be holding hearings in Washington, D.C. on the question of legislation relating to draft resistance. I share your concern, as expressed in your March press conference, that registration for the draft is likely to "create a whole new class of criminals."

I have direct experience with legislation and court actions in connection with draft opposition. In 1967 I was a student at the University of California at Berkeley. I helped organize a demonstration called "Stop the Draft Week" in which over 10,000 people came out to protest the draft and Viet Nam war. As a result of organizing that demonstration, seven of us were indicted for conspiracy. We became known as the Oakland 7. In a jury trial lasting 13 weeks during the spring of 1969, we were acquitted of all charges.

Over the last year I have once again become active in opposition to registration and the draft. In the last several months I have had the opportunity to speak on many college campuses, to community and labor groups. There is widespread opposition to any draft registration plan given the current world situation. Literally tens of thousands of young people are debating whether they should register for the draft at all. The government is indeed in danger of creating a whole new class of criminals.

If your subcommittee is scheduling hearings or if you know of other appropriate Congressional bodies that will hold hearings on this question, I am available to testify. I would be happy to explain my experiences during the 1960's and share my perceptions of the views of today's youth on this question.

You may contact me at the above address or phone me at (415) 652-4827.

Sincerely,

REESE ERLICH.

Brian M. Lynch,
Jamaica, N.Y., April 9, 1980.

Hon. Robert Kastenmeier,
Rayburn House Office Building,
Washington, D.C.

Dear Representative Kastenmeier: A March 27, 1980 article in the N.Y. Times noted that you will be holding hearings on the question of the President's draft-registration proposal, and that these hearings will begin sometime in mid-April. I am concerned about the question of draft-registration, as I see the present moves toward further militarization in this country to be detrimental to national and international "peace." Thus, I have been working over the past months to encourage others to register their opposition to draft-registration as part of my broader concern to engage others in a deeper consideration of the question of developing peace. This has led me also to counsel many young people regarding the "alternatives" open to them should an actual draft be reinstated at any time.

For these reasons, I am writing to you, first to let you know of my moral support for you in your own opposition to draft-registration, and also to ask for your help in obtaining as much up-to-date information about the various dimensions of the draft-registration question as might be available. Specifically, I would like to be in touch with current budget proposals etc. before the various House committees, and I would like to keep upon the results of hearings (such as those in the House Judiciary subcommittee of which you are the Chairperson) especially regarding the current status of the draft-registration question itself, and regarding the question of conscientious objection, as well.

Thank you for your help, and please know that I am looking with much interest for the results of your subcommittee's hearings.

Sincerely,

Brian M. Lynch.

Lodi, Wis., *April 13, 1980.*

Representative Robert Kastenmeier,
Chairman, House Judiciary Subcommittee on Courts, Civil Liberties and the Administration of Justice.

Dear Representative Kastenmeier: We have written to you before to register our extreme opposition to any plan to institute a registration to the draft for either men or women. However, we wish to again submit our views in writing to the House Judiciary Subcommittee on Courts, Civil Liberties and the Administration of Justice at its hearing in Madison, Wis. on April 14, 1980.

If a registration or a draft should be instituted, we oppose governmental punishment of those persons who do not find the cause sufficient or who have an ethical objection to serving. Especially, the thought of any type of imprisonment is utterly abhorent and we would oppose it to the limits of our ability.

Due to the fact that Congress and our President have failed to explore alternative sources of energy (including solar energies) and we needlessly continue our dependence on foreign oil, we will not accept the proposed solution that we sacrifice our children's lives to insure a continued supply of that oil. We do not believe economic considerations are a justification for military intervention. We will not cooperate with such policy solutions.

Sincerely,

Helen A. Siebers
Thomas E. Siebers.

Arlington, Va., *March 28, 1980.*

Hon. Robert Kastenmeier,
Rayburn House Office Building,
Washington, D.C.

Dear Mr. Kastenmeier: Your recent attack on the proposal to renew registration for Selective Service, based on an unofficial report by an Air Force reserve officer, cannot be left unchallenged. While I do not, of course, share your view about the necessity for renewing registration, certainly I respect your right to your views. But as a public official, I think it is incumbent to be straightforward in any presentation which is purported to be factual. To do otherwise I believe to be misleading.

Since your views were so widely exposed in the public forum, I chose to respond in the same arena. I did want to give you the courtesy of showing you what it is that I have sent to a number of newspapers in response.

Sincerely yours,

ROBERT F. COCKLIN,
Major General, AUS Ret.
ARLINGTON, VA., *March 28, 1980.*

Enclosure.

EDITORIAL PAGE EDITOR,
New York Times,
New York, N.Y.

DEAR SIR: Representative Robert Kastenmeier (D-Wis.) has just "released" a report written by an Air Force reserve officer which claims that "more than half" of the nation's draft registrants would seek conscientious objector status if faced with being called to serve. Mr. Kastenmeier is an avowed opponent of selective service and has chosen, in his zeal, to overlook some very cogent points about the report.

The report was written based on experience during the immediate post-Vietnam period when the politically-prostituted Selective Service System had not yet had a chance to recover from its misuse. If Mr. Kastenmeier had been objective enough to consider the abundance of new evidence about public support for a resumption of registration, he might have been less inclined to give the outdated report much credence.

At one point in his statement, Mr. Kastenmeier asked what the penalties might be for failure to obey a call under the Military Selective Service Act, which is still very much in force. He knew, of course, that the law designates a penalty of up to a $10,000 fine and five years imprisonment. As severe as that is, the penalty is mild compared to that required by the Civil War national conscription act which considered any man who failed to report for service a deserter from the Army and made him liable to being shot.

I would agree with Mr. Kastenmeier and others who decry the need to create, "A whole new category of felons," from those who will not answer the call to serve. It is a waste of the taxpayer's money to keep them in jail. For those who choose to ignore the obligations of citizenship, a far more fitting punishment would be to exclude them from some of citizenship's benefits. i.e., welfare, federal aid to education, food stamps, guaranteed home loans, and so forth. Such a quid pro quo would be entirely in the American tradition.

I know of no pools, nor any data from responsible persons, that indicate a national trend among affected youth that would support the contention made in the report. Of course, there will be some who will not serve, there always has been a small number. At least 60 percent of youth is in favor of registration and although 40 percent are not in favor of registration, by no means does this mean they would not obey the law.

For reasons I do not understand, Mr. Kastenmeier does not appreciate the sophistication, genuine concern and patriotism of the vast majority of American youth who appear to be better informed and more sensitive to national and international issues than he. It is absolutely demeaning to our youth to accept at face value the assertions of a vocal minority of our society who may themselves oppose registration but who pass their own minority views as a consensus. Surely Mr. Kastenmeier knows better.

Sincerely yours,

ROBERT F. COCKLIN,
Major General, AUS Ret.

APPENDIX 2—ADDITIONAL MATERIALS PROVIDED BY WITNESSES

1. BY THE NATIONAL ORGANIZATION OF WOMEN

THE REGISTRATION AND DRAFTING OF WOMEN IN 1980

I. NOW's position on the current proposal to institute a compulsory registration of young people

The drive to reinstate compulsory registration of young people and to ultimately reinstate the draft was begun almost immediately after the draft was ended and the All-Volunteer Force (AVF) was created in 1973 (registration of young American males ended in 1976). Four reasons generally appear in arguments to reinstate the draft: (1) it would be required in the case of a major war; (2) the declining youth population will create serious problems in meeting personnel requirements; (3) should a national youth training and work program be instituted, military service would be part of the program; and (4) considerable savings in costs could be realized. Underneath the surface of these arguments are the racist and sexist attitudes which pervade our society, coupled with undisguised economic exploitation.

A fear frequently expressed is that the army is rapidly becoming a black man's army—34 percent of Army recruits in 1978 were black—with the unstated racist views that blacks are inferior "raw material" and therefore inferior soldiers. Hand-in-glove with these racist attitudes are the sexist attitudes towards women in the military. Female participation in the military has increased dramatically under the AVF to a projected 13 percent of the active forces in 1983. Women constituted less than 1 percent of the draft army.

Poverty has always been one of the features of military life, especially in the lower ranks. This situation has been somewhat mitigated in the AVF by the pay increases required to attract volunteers with the result that personnel costs, in the view of some, have made serious dents in funds available for hardware. A return to the draft is viewed, again by some, as the easiest way to reverse this trend.

Myths about the All-Volunteer Force are abundant. Contrary to myth, the active forces of the AVF have been within 1.5 percent of the congressionally authorized limits since 1974. The AVF has superior mental ability, is better educated, has less discipline problems, and has proportionally the same number of people from the lower economic levels, but a higher percentage of minorities, compared to the old conscripted service of the Vietnam War period. The Department of Defense itself in a December 1978 report stated in unequivocal terms that the AVF was superior to the drafted force.

Why then the need to register? We are told it will show the USSR that we mean business, and that it will increase our ability to mobilize. Actually, registration saves only a few days. And although it sounds strong to Americans who want to show that we are serious, in reality it proves nothing to the USSR which appreciates fully how little names on a list actually mean.

NOW is against the registration of young people precisely because it is a response which stimulates an environment of preparation for war. Too many of us still remember the senseless killing and destruction in Vietnam—which we also protested—and believe that violence is the "ultimate solution" taught most typically to males in our society. We reject that solution, and believe that too many are willing to wage war with others' lives. National defense and self defense is one thing; aggression for economic self-interest is quite another. To fight a war for oil is to deny that the inherent rights of all human beings must take precedence over the economic self-interest of a very few. We are committed to working for the day when our nation and our world priorities will be people—a day when our domestic problems are not solved by military aggression.

If the objective is really to increase the number of people capable of being mobilized in a short period of time and to improve the quality of the national defense, the easiest way to accomplish this without increasing the war atmosphere in the world and without involuntarily disrupting the lives of young people is to remove the sex discriminatory restrictions on women in the military. Without these discriminatory practices, women recruits would be in far greater supply and of a higher caliber than additional male recruits. Under existing practices, female numbers are depressed to a current 8 percent of the armed forces (programmed to increase to about 13 percent by 1983). The current discriminatory practices are based upon outmoded concepts of both women's role and combat. Today's military is highly technological. The military is more in need of brains than brawn. Moveover, physiological limitations go both ways: a small, agile person is more advantageous than a large, heavy person in many situations.

What is the impact of sex discrimination on women in the current military? Women are given fewer educational, training and advancement opportunties than men in the largest single vocational training institution in our country, the military. Approximately 83 percent of enlisted women are in the four lowest pay grades as compared to 68 percent of men. The four highest pay grades hold 23 percent of enlisted men and only 3 percent of enlisted women. Officer training programs and many specialties are closed to women except in token numbers. Using even the most inclusive measures, 75 percent of the positions in the military are unavailable to women because they are defined as combat-related or because they are reserved to provide rotational and career progression slots for men.

What would be the impact on women and the nation if women were excluded from the registration or ultimately from a draft? Currently, more women are capable and willing to serve than are recruited. Many more will be turned away to the detriment of women and the military if the limited progress toward equality in the armed forces is halted. Female numbers in the military would decrease or be held to current projections. During the last draft, women were held to 2 percent of the armed services. A signal would be sent to the armed services that women do not have to be treated equally. Women serving in combat areas would simply be classified once again as non-combatants or civilians and asked to serve for fewer benefits and lesser training, as was done in the past.

Women have always served. The question is whether they will serve equally or at greater risk to themselves. In modern warfare, the front line and combat zone are difficult to determine. People behind the so-called front lines are nevertheless serving at great risk. Women are serving at even greater risk because they have less combat training.

The modern military depends upon a high degree of technology. Not only in the modern civilian labor force do women fill many of the technically trained positions, but also in the current military. Women are simply necessary and the need for women is increasing as the supply of men decreases and the need for highly qualified and trained or trainable people increases.

The current debate over foxholes in Korea and the trenches of World War I is as obsolete to warfare in 1980 as the structured lines of the British Redcoats in the American wilderness. Warfare has changed and so has the position of women in education, training and the labor force.

We will serve. We will serve, for one reason, because the military has difficulty attracting sufficient numbers of people who are educated and technically trainable. One half of the pool of talented and trained youth of our country is women. Moreover, many personnel categories required by the modern armed services—clerical workers, keypunch operators, computer specialists, communications experts, administrative personnel—are more readily found already trained in the female population. If there is a true national emergency we will serve and we will do so in all capacities. The myth that we are not needed and not first class citizens must end right now.

Those who oppose the registration and draft for females say they seek to protect women. But omission from the registration and draft ultimately robs women of the right to first class citizenship and paves the way to underpaying women all the remaining days of our lives. Moreover, because men exclude women here, they justify excluding women from the decision-making of our nation.

When the word "protection" is used, we know it costs women a great deal. In this case, it fortifies a pattern of sex discrimination in our nation which manifests itself in many ways. One rape occurs every eight minutes. One out of every four American married women is a victim of wife beating. Eight out of ten murder victims in the United States are female. Women earn 59¢ for $1 a man earns in the same 40 hour week. The 13 million American women 65 years of age and over have an average income of less than $3,000 a year.

Do women know violence? Yes: women are the most frequent victims of violence. We must not forget that the great wars in Europe have visited far greater hardship upon the civilian population, largely untrained and unprotected women and children, than upon the military forces of the combatants.

Do women know hardships? Yes: the cost of discrimination to women is too dear—we pay with our lives.

War is senseless. Neither the lives of young men nor young women should be wasted. But if we cannot stop the killing, we know we cannot choose between our sons or daughters. The choice robs women as well as men. In the long and short run, it injures us all.

II. The current role of women in the military

Background

World War II—350,000 women served in many traditional roles and in nontraditional roles as pilots, truckdrivers, airplane mechanics, gunnery instructors, air traffic controllers, naval air navigators, etc.

1948–1967—Women were limited by law to 2 percent of the total enlisted services. Women officers were limited by law to 10 percent of total enlisted women.

1968–1972—As the result of military regulations severely restricting the positions available to them, women remained less than 2 percent of the armed services.

1973–1980—The draft terminated and the All-Volunteer Force was established. The armed forces began to increasingly utilize women as a factor in making the All-Volunteer Force work. The number of women increased from 2 percent to approximately 8 percent of the total armed services today. Despite these increases, women continue to be restricted by law, regulations, practices and policies to a small fraction of the military. The restrictions are based largely on the exclusion of women from jobs defined as combat-related and the reservation of numerous slots for men for career progression and rotation purposes.

Present Status of Women in the Military

Quantity and diversity.

Women comprise approximately 8 percent of the total armed services. Women are projected by the Department of Defense to be 13 percent of the armed services by 1983.

Increased participation for women in the military has also meant increased participation for minority women although the only group of minority women currently fairly well represented is black women who comprise 19 percent of total enlisted women. Hispanic women are a little more than 3 percent of enlisted women and Native American and Asian American women are less than 2½ percent. The restricted number of women officers and the token number of women promoted to truly significant rank is especially apparent when it comes to minority women who have not even reached the level of tokenism.

Women recruits are performing well in diverse military occupational groups including electrical equipment repair, communications and intelligence, other technical, administrative and clerical, crafts, service and supply, and medical and dental.

Higher educational level

Quality.

With the growing complexity of the modern technological military, high school completion is the best single measure of potential to succeed in the armed services, according to the Department of Defense. A significantly greater percentage of women recruits have high school diplomas.

	1971	1972	1973	1974	1975	1976	1977	1978
Percent recruits high school graduates:								
Female	93.9	94.4	95.2	91.7	90.6	91.1	(1)	91
Male	64.3	66.8	66.5	58.1	62.5	64.7	(1)	7

[1] Not available.

Higher military entrance examination scores

Women recruits score on the average 10 points higher on entrance tests.

Equal or higher promotion rate

Women are being promoted at the same or higher rates than men in all military occupations open to women.

Equal or better performance at military service academies

Women have been admitted to the Army, Navy and Air Force Academies since 1976. In this year's first graduating classes with women, the women's performance has equalled and often surpassed that of their male counterparts.

Fewer disciplinary problems

The average woman recruit is much less likely than a male recruit to become a discipline problem. Women lose far less time than men for absence without leave, desertion, alcoholism and drug abuse.

Physiological differences.

On the average, American men are taller, heavier and stronger than American women. This fact is cited as proof that men should dominate the military and be the only ones in combat roles. This unwarranted assumption ignores four major points:

1. Size is not always a factor.

Technological advances continue to diminish the importance of brute strength. The "person who pushes the button" may be in a combat role, but does not require extraordinary strength to carry out her/his duties.

Even many of the "traditional" combat roles, such as those in the Air Force and Navy, do not now and never have required the brute strength allegedly associated with combat.

If the truth be known, in most close combat a gun is the great equalizer. And our experience in ground combat with Asian men (who are on the average smaller than American women) in Korea and Vietnam demonstrated that smaller men can be the victor because of skill or training.

2. Size can be a factor—a plus for women.

There is no reason behind the blanket assumption that "bigger is always better" in the military arena. The proliferation of advanced equipment installed in planes, ships, tanks and other land vehicles is turning "elbow room" into a scarce commodity. A soldier with a smaller physique becomes a valuable asset in these situations. In many cases, it is the small, lithe and agile soldier who can do the job more proficiently, escape the space more easily, and better fit the needs of today's (and tomorrow's armed forces.

3. Weaponry and equipment can be adapted to fit the needs of the average female soldier.

Our military has already faced similar needs in adapting U.S. military equipment for use by allied forces whose average sized male is smaller than the average American male. American industry has made great strides in adapting equipment and clothing originally designed for use by men in the construction and telecommunications fields to fit the needs of the highly productive female worker in non-traditional occupations.

4. Finally, the fact that the average man is stronger than the average woman does not mean that all men are stronger than all women.

First, it has been proven that the differences narrow or disappear when women receive adequate training. And, more significantly, no one disputes that some women are stronger than some men. Assigning jobs by gender instead of by ability simply does not make sense. What it does make is a less qualified military. If the armed services are to operate to their fullest capacity, they must classify people by their ability to do the job—not by their gender.

Combat Effectiveness

The first myth to be dispelled is that women have not been in combat. According to the Women's Equity Action League Educational and Legal Defense Fund:

"During World War II, 20,000 military women in the Army, Navy, Marine Corps and Coast Guard served as nurses, mechanics, truck drivers, parachute riggers, typists, radio operators, technicians and air traffic controllers. They performed bravely and competently under hostile fire.

American military women landed on the beaches at Normandy, France as part of the 'D-Day' allies invasion. Army women travelled with the Fifth Army close to the front lines during the invasion of Italy. Army women also served in the South Pacific and North Africa. They received many military decorations for bravery, including the Purple Heart—awarded to those wounded by enemy fire.

Nearly 100 Army and Navy nurses were prisoners of war for three years in the Philippines during World War II.

Over 7,000 women served their country in Southeast Asia during the Vietnam War and received combat pay. Some of these military women died as a result of enemy action."

Women have served and will continue to serve in combat environments under the same conditions, suffering the same risks and the same injuries as men. Playing the language game of classifying an army nurse or a Women's Air Service Pilot as noncombatant does not change the fact that they are in combat. The reality is that women have served and died for their country and will continue to do so. The question is whether they will do so with the same training, benefits and salary as men.

In contrast to emotionalism and unsubstantiated generalities, many tests have been done by the armed services in the late 1970s to assess the capabilities of women in combat roles:

Women content in units force development test (MAX WAC)

Purpose: To test the effect of placing women in combat support and combat service support units

Exercise: 72 hours under normal field conditions

Results: The performance of men and women with no prior civilian experience and equal military training was equal.

The units' effectiveness was not impaired by presence of up to 35 percent women soldiers. Note: 35 percent was the maximum tested in this particular exercise; there is no evidence it is the actual "maximum."

Reforger Exercises (Return of Forces to Germany Exercise)

Purpose: To test the performance of enlisted women in extended field situations.

Exercise: A 30 day field exercise involving 1½ weeks of war games in Germany. Ten percent of the combat support and combat service support units were comprised of women.

Results: Women's skills were as good or better than the males. Women had the stamina and endurance to maintain performance standards in the field equal to those of men. Women were highly proficient. Women were highly motivated.

Navy U.S.S. Sanctuary

Purpose: To test the effectiveness of women at sea

Exercise: 60 enlisted women served on board the U.S.S. Sanctuary

Results: Women performed every shipboard function with the same ease, expertise and dedication as men. Morale was high. Response of male and female sailors was favorable.

Operation Bold Eagle

Purpose: A guerilla warfare and airborne assault exercise.

Exercise: 150 women and 4000 men participated.

Results: Women were exposed to the same hardship in the field as men and they performed very well.

Army human engineering lab test

Purpose: To test the ability of women to operate 105 and 155mm artillery howitzers.

Exercise: 13 women office workers participated in a three-week physical training program and were then assigned to the "heaviest, noisiest job in the army." They loaded and fired the howitzers and met a tough rate-of-fire test of four rounds a minute for three minutes, then one round a minute for the 155mm and ten rounds a minute for three minutes for the 105, followed by three rounds a minute on the same weapon.

Results: The women were rated "professional, outstanding, and phenomenal."

The above tests demonstrate that women are capable of performing satisfactorily or better in combat-related positions. Those who would restrict women from combat based on the fear that the quality of our military would be adversely affected should, rather, advocate women in the armed forces. Selection and training of soldiers based on ability rather than gender would result in a better quality military than could be achieved by arbitrary exclusion of one-half the potential pool.

Women soldiers lose less active duty time than men

Myth: Women, because of pregnancy and menstruation, will lose more active duty time than men.

Reality: The evidence is that there is little difference in the time lost by women and men and that, in fact, it appears that less time is lost by women.

This is true even when pregnancy, the largest single factor in lost time for women, is included.

The only definitive lost time study was done in the Navy and it shows that men lose twice as much time as women.

COMPARISON OF LOST TIME FOR ENLISTED MEN AND WOMEN IN THE NAVY

	Lost days as a percent of total days available	
	Women	Men
Lost time category:		
Alcohol abuse	0.09	0.12
Drug use	.02	.12
Unauthorized absence (AWOL)	.05	.24
Returned deserters	.07	.62
Abortion	.03	0
Pregnancy	.37	0
Total	.63	1.10

The Retention Rate of Women Soldiers is Higher

Myth: Women are more likely to drop out of the service (because of pregnancy, marriage, or alleged lack of ability) thereby wasting valuable training invested in them.

Reality: Women are being retained in the service at higher rates than men.

PERCENTAGE OF 1971–76 ENTEREES STILL ON ACTIVE DUTY AS OF JUNE 1976

	Female	Male
Year of entry:		
1971	22.8	17.6
1972	28.0	23.4
1973	43.1	37.5
1974	61.6	58.3
1975	75.9	74.6
1976	87.7	87.4

Of those recruited in 1973–1976, 64 percent of the men remained on active duty as of June 1978 compared with 70 percent of the women.

Economics of Women in the Military

Opening the doors to more women in the military would prove cost-effective. The simple fact is that it costs far less to recruit high quality women than to recruit high quality men.

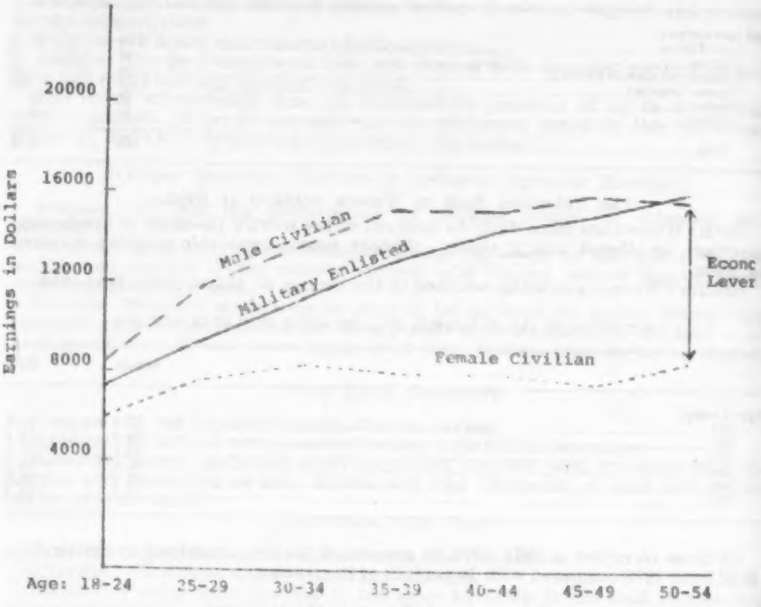
Because of the restrictions on the number of women the services will accept, highly qualified women are recruited without effort while less qualified men are sought with incentives and high cost advertising campaigns. Excluding enlistment bonuses, the costs for an Army recruit are:

High quality men	$3,700
High quality women	150
Low quality men	150

Many people believe that the military spends more money per female recruit because of "difficulties" in training, housing, clothing and recruiting women. This is simply not true. The average woman in the military costs the Defense Department about 8 percent less than the average man according to an often-quoted study on Women and the Military by Binkin and Bach for the Brookings Institution. The average annual per capita costs of providing medical care, housing and transportation are approximately $982 less for women than for men.

Despite the sex discrimination which restricts them to few and truncated career paths, the military is attractive monetarily to many women. Especially for those women who pursue traditional careers, the average pay for enlisted military personnel far surpasses the average pay for civilian women who earn 59¢ for every $1 earned by men. The services, unlike the private sector, do pay men and women equally if they are of the same grade, longevity, and skills. Like the private sector, however, enlisted women are clustered in the lower pay grades and are under-represented in the higher pay grades.

COMPARISON OF MEAN ANNUAL EARNINGS OF CIVILIAN YEAR-ROUND FULL-TIME WAGE AND SALARY WORKERS WITH AT LEAST FOUR YEARS OF HIGH SCHOOL BUT LESS THAN FOUR YEARS OF COLLEGE BY SEX AND AGE, AND MILITARY ENLISTED PERSONNEL BY AGE, CALENDAR YEAR 1975



Source: Binkin-Bach Study—The Brookings Institution.

CHARACTERISTICS OF MALE AND FEMALE RECRUITS[1]

	Male	Female
Characteristic:		
Average age	18.9	20.0
Percent married	11.6	11.6
Percent black	18.5	16.1
Percent Hispanic	(2)	[3] 3.1
Percent high school graduates	62.9	91.7
Percent still on active duty, June 30, 1978	64.0	70.0
Marginal recruiting cost for high quality army recruit	$3,700	$150

[1] Fiscal years 1973–76.
[2] Not available
[3] 1977 data.

III. Registration and draft

Registration means simply compiling a list of all people (male, female, or both) who happen to fall within a certain age category, e.g., 18 to 22 year-olds. It does not mean classifying these people as to suitability for military service. Thus registration is only a crude first step in generating an effective military force. Registration at the present time would save only 13 days of the months required to produce military personnel with even minimal training if a draft were to actually follow registration. This is the real effect of registration and its relevance to our military preparedness.

A draft subsequent to registration would mean the classification, induction and training for military service of a large fraction of all young people in a certain age group. It is important to remember that every draft has included exemptions and deferments. Although one can no longer openly buy one's way out of the draft as during the Civil War, large numbers of men are exempted because of their physical or mental condition, because they support more than a certain (arbitrary) number of family members, or because they possess critical skills. Deferments have been granted for completion of education and training and for employment in fields deemed vital to the war effort. Since our armed forces have been staffed on an all-volunteer basis since 1973, a draft represents a complete reversal in policy.

Some would have us believe that the shortcomings of the All Volunteer Force have been so serious that the draft is the only recourse. How does the AVF compare to the pre-1973 draft military? A 1978 Department of Defense study of the AVF showed to be superior to the draft military with respect to:

1. Educational Level—One measure of the increased educational level is the percentage of high school graduates. This has increased from 68 percent of those entering the services in 1972, the last year of the draft, to 77 percent of all recruits in 1978. Other measures, such as the percentage of the enlisted force with some college education, also show an increased educational level in the AVF.

2. Mental Quality—Written test scores show that mental quality of recruits in the AVF is better than that in the draft era forces. One illustration of this improvement is the decrease from 14 percent to 5 percent of personnel in the lowest mental quality category during the years the AVF has been in existence.

3. Discipline—Military discipline as measured by courtmartial rates, non-judicial punishment rates and desertion rates has steadily improved since the inception of the AVF. For example, desertion rates have dropped from 28 per 1000 in 1973 to 18 per 1000 in 1977.

Initial concerns that the AVF would be less representative of society as a whole than the draft forces have not materialized. Geographic representation and family income profiles almost precisely duplicate those of the draft. In both, the very rich and the very poor are under-represented.

Since the inception of the AVF, however, minority participation in the military has increased significantly. The 1978 study of the Department of Defense on the AVF did not publish statistics on percentages of all minority service persons, but did publish this data for blacks. In the AVF, the percentage of blacks continues to increase, both in officer and enlisted ranks. By the end of 1978, blacks comprised 17 percent of total active duty armed forces personnel: 19 percent of enlisted personnel and 4 percent of officers. In the Army, blacks comprised 7 percent of officers, 29 percent of enlsited personnel, and 34 percent of new recruits, an all-time high. In fiscal years 1964 to 1972, before the AVF came into existence, blacks comprised an average of 10.8 percent of total enlisted active duty forces.

The disproportionate numbers of black volunteers are partially the result of job discrimination and blocked mobility patterns in the larger society. Indeed, many civil rights leaders believe that a return to the draft would in fact threaten job opportunities for blacks in the military.

As to cost savings, in contrast to the claims that a draft force would be far less expensive, it was estimated in the 1978 Department of Defense study that the savings in returning to a draft force would be only about 0.2 percent of the Department of Defense budget. According to the 1978 Department of Defense study: "Considering that the career force has always been [staffed] by volunteers, the only savings one should anticipate are those associated with recruiting, paying, and training the first-term members. Those savings would be partially offset by the cost of operating the conscription system. Anual net savings could be as high as $250 million per year, not considering any change in pay rates."

Pay rates are, however, a critical factor. Draft advocates may be planning to "save" money in personnel by freezing or reducing pay at lower enlistment levels. The point is that the major way the draft could result in significant cost saying would be through gross exploitation of draftees considering that junior pay is barely at minimum wage today.

Considerable concern was expressed during planning for the AVF that recruitment alone could not maintain the required staffing levels. This has not proved to be the case. Since 1974 staffing levels in the AVF have been within 1.5 percent of those authorized by Congress.

Other arguments for resuming the draft focus on the understaffed reserve forces. Department of Defense statements indicate that the origin of this problem lies in the initial asumption by the military that the major problems in the All-Volunteer Force would be with the active components. These therefore receive most of the management attention and the reserves were left to languish. Defense spokesmen have stated that increased attention to the reserves will undoubtedly yield better results and that until such efforts are made it would be reckless to advocate conscription to fill vacancies in the reserve.

The establishment of the All-Volunteer Force is in line with our tradition of using the draft only in time of war. Since no case can be made for any deficiency in the All-Volunteer Force, it is legitimate to question the motivation of those pushing for a return to the draft. It is even more difficult to argue for the wasted expenditures and efforts of registration without a draft.

IV. The registration and drafting of women

NOW opposes the registration and drafting of anyone. The elimination of sex discrimination in the military would, in and of itself, markedly improve our national defense. However, to adequately utilise women, as volunteers or as draftees, sex discriminatory practices must be eliminated. In fact, if the current restrictive legislation, regulations, policies and procedures are maintained in the military, the percentage of women cannot increase much beyond 15 percent whether or not there is a draft of women.

If a draft and registration is instituted, NOW believes it must include women. As a matter of fairness and equity, no draft or registration that excludes one half of the population in 1980 simply on the basis of gender could be deemed fair. Young people who have common aspirations, hopes and education will resent women being excluded. Women will pay with more limited opportunities and rights. Our nation will pay by limiting its resources. All will pay by the constant exclusion of females and their priorities from the nation's decisionmaking.

Any registration or draft that excluded females would be challenged as an unconstitutional denial of rights under the Fifth Amendment. Two developments since the termination of the Vietnam-era draft weigh heavily on the question of women's inclusion in any future registration and draft and lead to the conclusion that excluding women would be found unconstitutional.

The first of these was the establishment in 1976 by the Supreme Court of a more stringent review standard for sex-biased classification and the subsequent application of this standard to legislation containing sex-based classifications. The second development is the consistently high performance of women in all military categories to which they have been admitted as the result of recent changes in military policy.

There is no doubt that any attempt to institute registration and a draft excluding women would result in legal action. There are also very substantial grounds for believing that the courts would find any such attempt in violation of the Equal Protection Clause of the Fifth Amendment.

Between 1980 and 1992 the pool of young males will decrease by almost 25 percent. This drop, coupled with the increasing complexity of modern weapons and the even more limited pool of technically trained or trainable youth, leaves little room for rational argument against women's increasing participation in the military, on either a voluntary or involuntary basis. The military simply will not be able to operate without utilising women.

Any draft, whether it includes women or not, will have deferments and exemptions based upon such matters as physical and mental health, specialized skills, or family dependents and obligations. The draft has usually been applied to young people, the overwhelming majority of whom are not married and do not as yet have family responsibilities. In any case, if women were included, such exemptions would have to be written to be applicable to either sex. Congress would retain the power to define the exemptions from compulsory service which then would be applied to both men and women.

The issues of fairness, legality and need notwithstanding, the full integration of women in the military cannot occur until sex discrimination is routed out. The April 1977 report of the U.S. Commission on Civil Rights found 140 provisions relating to the armed forces in Title 10 of the U.S. Code which contained sex-based references. Not until discriminatory regulations, laws, practices and policies are off the books will women gain equal access to the opportunities available in the military.

V. Sex discrimination in the military

Sex discrimination is rampant in the military. The single largest reason given is the exclusion of women from combat roles. In reality sex discrimination in the military serves to protect male career lives and is based on stereotypic assumptions about the inferiority of women.

In considering women in combat there have been two basic questions: (1) Should women be exposed to the conditions of combat and war, and (2) Will women in combat adversely affect the proficiency of the combat force?

Clearly, neither men nor women should be exposed to war. It is obvious, however, that without the establishment of a war-free society it is impossible to shield women from the violence of war either as civilians, soldiers, or as relatives or loved ones of both.

Women, as members of the civilian population, have always suffered great damage as the front lines or war merge with their homes. If civilian women have been unable to escape from war, it is surely evident that women in the military have been repeatedly exposed to combat conditions. Although women have been barred from combat on papers, they have often served in the midst of it, and been exposed to the same dangers and hardships as their male counterparts. Women's Air Service Pilots, nurses, medical technicians, and many more have served and died for their country. Women are assigned to combat support and combat service support units, and function side by side with men. "Behind the lines" jobs are hardly safe in a world where there are fewer and fewer known "lines."

Moreover, the hysteria at the thought of sending women into combat must be placed in its proper perspective. In the last draft, less than 1 percent of the men eligible were inducted and subsequently assigned to a combat unit. If women were added to the pool, the statistical chance of an individual being drafted and assigned to a combat unit—whether or not there was a female combat exclusion—would be negligible.

The second question that is inherent in any plea to keep women out of combat is whether the presence of women soldiers will lower the fighting quality of the military. Again, clearly, women soldiers who have been trained have demonstrated their capabilities. The numerous tests cited in Section II are proof that those persons who serve in combat must be chosen on the basis of ability rather than gender if the military is to be as proficient as possible.

Thus, it is clear that there are no genuine reasons to exclude women from combat. There are, however, grave effects on the opportunities available to military women based on the unnecessary combat restrictions.

The chart below, entitled "Service Data Submission on Potential Use of Women," indicates the Department of Defense's explanation of restricted positions for women. The single largest reason for closing positions to women is indicated in line B/C—combat and combat support. Combat restrictions do not now and never have "protected" women. They do assure that military women can never reach the same posts as men or follow unlimited career paths. They do serve to restrict women from 43 percent of the total military positions. In the Navy, for example, limiting women to non-combat ships allows only a fraction of women to serve in a "warfare" specialty, thereby insuring inequities in career opportunities and assignments.

Service data submission on potential use of women

	Percentage
A—Total Positions	100
B/C—Combat & Combat Support	43
D—Net A−(B/C)	57
E—Rotation Base	7
F—Physiological Limits	0
G—Other Limits	23
H—Open to Women H=D−(E+F+G)	27
I—Women Utilized 1977	6

Aside from combat restrictions, however, the chart tells a shocking story about discrimination against women in the military. Line E indicates that an additional 7 percent of positions are reserved for men to provide a base for sea/shore and overseas/continental U.S. rotations. Line G shows that yet another 23 percent of positions are reserved for other reasons. What are the other reasons? Slots reserved to provide career progression opportunities for men. Limitations on the concentration of women in various units. Lack of available housing—the Air Force, for example, excludes women from 45 percent of its overseas positions because of "unacceptable" facilities. The Air Force considers it "unacceptable" for men and women to share a common hall.

Perhaps the most revealing line is line F. The military there states that no additional positions are excluded for physiological reasons. The armed forces are saying that aside from those positions restricted because of their "combat" nature, there are no jobs in the military which women cannot perform because of size or strength.

The bottom line, using even this most liberal of measures, is dismal—a total potential of only 27 percent of military positions open to women, and women today comprise even less at 8 percent (6 percent in 1977).

Women's entry into the military is hampered by physiological restrictions. Height and weight restrictions serve to assure that women remain frailer than men by imposing lower weight limitations on women regardless of their bone structure or muscularity. The maximum weights for men and women six feet tall in the various branches of the military are indicated below:

	Maximum weight for 72 in	Differenc
Army:		
Male	227	56
Female	171	
Navy:		
Male	227	52
Female	175	
Marine Corps:		
Male	203	32
Female	171	
Air Force:		
Male	196	29
Female	167	

There are clear inequities in the different limitations. Women are not allowed to weigh the same or even near the same as men regardless of their bone structure. An Air Force regulation even allows further adjustment of the maximum weight allowance for men with large bone structure, but women with large bone structure are not granted any adjustment.

To illustrate the problems that these restrictions can cause beyond the initial problem of being allowed to enlist, there is the regulation that provides that if a male or female in the Air Force wants to be a firefighter, he or she must be at least 5'6" and weigh at least 140 pounds. The maximum allowable weight, however, for a 5'6" woman in the Air Force is 141 pounds. In other words, an Air Force woman 5'6" must be within one pound of her maximum weight allowance to be a firefighter.

Yet another source of discrimination is the failure of the armed forces to provide equipment and clothing adapted for use by women and men of small stature. The Defense Advisory Committee on Women in the Services (DACOWITS) recommended in the fall of 1979 the adaptation of military clothing to suit women's needs. During visitations to military installations, DACOWITS found that there were "items of present field work and organizational clothing for women that fit women so poorly that they constitute health and safety hazards and are inappropriate and non-functional."

Finally, there is the problem of sexual harassment of women in the military which has assumed epidemic proportions. The entire range from verbal abuse to physical attack can be found at any military installation. The attitude of some men is often one of resentment—that "this man's army" is being invaded by women who have no place in it.

Some service men look upon service women as a sexual convenience and freely use rank to proposition them. Official response to reports of sexual harassment is often non-response, the product of a "boys will be boys" mentality. Refusals on the part of women are often countered with charges of lesbianism, redeemable for a less than honorable discharge. Discharge may result regardless of the veracity of the charge.

Suspected homosexuality on the part of male and female military personnel constitutes grounds for discharge, with female personnel generally prosecuted more harshly than males. The waste of human talent and potential that results from the military's irrational discrimination against lesbians and gay men is oppressive to the individuals involved and is not in the national interest.

Beyond the discrimination against women who are actually in the military, there is lifelong discrimination against those women who are excluded from the military through no fault of their own. They suffer discrimination in the pursuit of governmental civilian jobs because of veterans preference. Veterans are, by law, given preferential treatment in federal jobs and most state jobs, both in hiring and promotions. Currently, because of past discrimination in the military only 2 percent of our nation's veterans are females. Considering that the federal government alone has three times as many civilian positions as American Telephone and Telegraph (AT&T), the nation's number one private employer, this results in massive discrimination against females. There are more than 2.8 million federal jobs. More civilians work for the Department of Defense than for General Motors. And the Veterans Administration has almost as many jobs as Exxon and Dupont Corporation combined. Discrimination against women in the military serves to injure all women in governmental employment and in salaries for their entire lives. To make matters worse for women, private employers are also encouraged by the government to provide preference to veterans.

The effects of discrimination against women in the military cannot be measured in dollars and cents alone. Being told they are unfit for combat training, that they need "protection," women are more readily victims of violence of every kind. Without training and the confidence that they can defend themselves, women live in daily fear of physical assault. One must ask, also, whether a would-be rapist might be less likely to attack a woman if he thought she had been trained as a Marine.

VI. Registration, draft and the equal rights amendment

The present discussion about the registering and drafting of women is without an Equal Rights Amendment and without our nation being at war. For the past several years, without any international crisis, the discussion of registering and drafting women has been a serious part of the drive to return to a drafted military. Whatever happens about registering or drafting women in the short run, in the event of a real national crisis or war, women will be drafted (if men are) and will serve.

Why? Because they are needed. Women today are an essential part of our nation's work force and are a key part of the trained and trainable technical pool of young people required to operate a modern military. Moreover, because of sex segregation in our labor force certain work categories, which are essential to the military, are overwhelmingly female. Women are a vital part of the administrative, computer, communications, medical and other technical personnel of this nation. Nurses, for example, will serve and will do so in combat areas. They deserve to be trained to defend themselves and their patients and they deserve to receive all benefits given other combatants.

Discrimination against women in the military costs this nation literally billions of dollars a year because better qualified women are not recruited while less qualified males are and at much higher enlistment bonuses and costs. The combat restrictions serve to bar an entire sex from a wide range of career opportunities and to deprive our national security of vital personnel resources. Women in combat-related categories have been in combat, wounded and killed. But they have served at greater risk to themselves because they have not had adequate combat training.

Discrimination against women in the military depresses opportunities, career paths, training and benefits for women. The military provides thousands of jobs, training programs and educational opportunities which are, for the most part, presently closed to women. Military pay which is, on the average, some 40 percent higher than female civilian pay, could be the only way out of poverty for countless young women. Restrictions on women in the military, far from protecting them, serve to continue their second class citizenship, pay and opportunity. And this discrimination exercised by the military affects women's employment opportunities and wages throughout their entire work lives because of veterans preference.

The inarguable need for women in the military, coupled with the blatant and crippling discrimination against women in the military, dramatically demonstrates the need for the ERA. Women in the military have just as much right to adequate equipment, training, clothing, benefits and career progression as men do. The Equal Rights Amendment will guarantee women equal rights and would serve as the basis to eliminate sex discrimination in the military.

Under the Equal Rights Amendment, the military's practices, regulations, statutes and policies that discriminate on the basis of sex would be held unconstitutional. People would serve in the armed forces according to their own abilities. The national defense would gain by increasing the size of the talented personnel pool at lower recruiting costs while women would have an increased number of jobs, training programs, and financial benefits.

In the event of registration or draft under the ERA, men and women would register and be drafted according to their ability. Exemptions would be determined along equitable and necessary lines, e.g., physical or mental fitness, sole parent of dependent child, etc.—but not upon the basis of gender alone. Under the ERA, the very possibility of a need for a draft or registration would be reduced because the numbers in the available pool of recruits for the All-Volunteer Forces would double.

The debate about whether women will serve in the military is over. They must serve, but at what cost to themselves?

The debate over registering or drafting women only serves to underline the dramatic necessity for the immediate ratification of the Equal Rights Amendment.

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2. BY THE SELECTIVE SERVICE SYSTEM

(A)

[Draft document presented to an interagency working group charged with preparing responses to a series of questions from Congress.]

IMPROVING CAPABILITY TO MOBILIZE MILITARY MANPOWER

Introduction

Since 1973, the Armed Services of the United States have operated under an All-Volunteer Force (AVF) concept. Even though inductions under the Military Selective Service Act (MSSA) have been terminated, the Selective Service System is still responsible for providing the increased personnel necessary to man our Armed Services during periods of national emergency. The ability of the Selective Service to support a military mobilization is of concern to the Administration and the Congress. This report examines a number of alternative Selective Service postures and sets forth a course of action to insure that Selective Service can, in a realistic, efficient and equitable manner, meet the emergency manpower needs of the Department of Defense.

The Selective Service and the All-Volunteer Force

In 1970, the President's Commission on an All-Volunteer Armed Force reported that they "unanimously believed that the nation's interest will be (best) served by an all-volunteer force, supported by an effective standby draft." (p. 56) Anticipating the advent of the AVF, the Congress, in 1971, amended the MSSA to provide that:

> The Selective Service System . . . shall . . . be maintained as an active standby organization, with (1) a complete registration and classification structure capable of immediate operations in the event of a national emergency and (2) personnel adequate to reinstate immediately the full operation of the system . . . in the event of a national emergency."

In fiscal year 1973, the AVF became a reality. The last draft calls were issued in December 1972; statutory authority to induct expired in June 1973. On April 1, 1975 the President suspended the requirement that those subject to the MSSA register with the Selective Service System. Classification actions were terminated and local boards, State Headquarters, and appeal boards were closed in fiscal year 1976.

The Standby Selective Service System

Under the AVF concept, the Selective Service is to provide a "standby" system to support a military mobilization. The system must be ready, without notice, to provide the untrained manpower that will be required to staff our Armed Services during a military emergency. The specific requirement—numbers of people and delivery schedule—are established by the Secretary of Defense.

In the mid 1970's, the Secretary of Defense established an induction requirement which Selective Service believed they could meet with their existing system. In October 1977, however, Defense increased the requirement and moved up the schedule. This change was based upon the worst case scenario in which there are no volunteers or enlistments from the delayed entry pool, and Selective Service provides the entire DOD requirement for untrained manpower. Table 1 contrasts the original and the revised delivery schedules.

TABLE 1.—DOD INDUCTION REQUIREMENT

	1st induction	100,000 inductions	Total inductions in 6 mo
Original	M+110	M+150	------------
Revised	M+30	M+60	650,000

Note: Mobilization day.

The ability of the Selective Service to meet the revised schedule has been the subject of a number of recent critical reviews, including a major President's Reorganization Project Study. Each study concluded, as did the then Acting Director of Selective Service in a report to the Congress (March 1979), that, Selective Service does "not presently have the capability to meet the Department of Defense wartime manpower requirements from our 'deep standby' status."

A Report to the Congress

The 1980 Defense Authorization Act required that the President address a number of issues pertaining to military manpower procurement policies and the appropriate posture for a "standby" Selective Service.

Specifically, Selective Service has addressed five issues posed by the Congress:

The desirability and feasibility of resuming registration under the Military Selective Service Act;

The desirabilty and feasibility of establishing a method of automatically registering persons under the Military Selective Service Act through a centralized automated system using school records and other existing records, together with a discussion of the impact of such a registration on privacy rights and on other constitutional issues;

Whether persons registered under such Act should also be immediately classified and examined or whether classification and examination of registrants should be subject to the discretion of the President;

Such changes in the organization and operation of the Selective Service System as the President determines are necessary to enable the Selective Service System to meet the personnel requirements of the Armed Forces during a mobilization in a more efficient and expeditious manner than is presently possible; and

Such other changes in existing law relating to registration, classification, selection and induction as the President considers appropriate.

In addition, the Conference report accompanying the 1980 DOD Authorization Act charges that:

"The President's recommendations with regard to the feasibility of establishing a registration plan through a centralized automated system should specifically address court decisions with respect to the requirement for issuing induction orders in the proper 'order of call', as well as those dealing with conscientious objectors, classification procedures, and other relevant court decisions."

"If the President intends to rely on post-mobilization registraton plans as the foundation of our mobilization capacity at time of emergency, then the report should also address the extent of testing of the plan that will be done, the acquisition schedule, and capability of computers and other necessary equipment, the extent of agreements with state election officials or other non-Federal agencies, the schedule for training Federal and non-Federal personnel who would be involved in registration, and the likelihood that induction orders issued under such a plan would survive potential court challenges."

The basic problem facing Selective Service is, "How should the Selective Service System operate to meet, efficiently and equitably, the mobilization needs of the Department of Defense for untrained manpower?" In order to address this question, we examined a number of options which correspond to the alternatives suggested by the Congress in the 1980 Defense Authorization Act. Specific options considered were:

1. A post-mobilization participatory (face-to-face) registration plan.
2. Pre-mobilization participatory registration.
3. Pre-mobilization participatory registration and classification and examination.
5. Non-participatory registration.

This Report.

This report reflects the process undertaken to provide an answer to the above question and to choose a course of action designed to insure that Selective Service will be able to carry out its mission in support of the Defense Department. First, we examined the DOD requirement with regard to the Armed Forces Examining and Entrance Stations (AFEESs) capacity to process registrants for induction. This established a minimum responsiveness goal for Selective Service. Next, we examined five options and assess their ability to meet delivery requirements, and their costs. We reviewed the post-mobilization plans previously submitted to the Congress and determined that major improvements could and should be made. We therefore developed a new post-mobilization system, dramatically different from the plan previously presented to the Congress, and determined its cost and responsiveness. Using this plan as a base, we provide for pre-mobilization registration, and estimated the added cost and improved responsiveness. We then considered classification, and classification and examinations, and, again projected the marginal cost and improvement in responsiveness. Our analysis also considered non-participatory registration as an alternative to face-to-face registration. Our basic conclusion was that non-participatory registration is undesirable and that every participatory registration option can more than meet the DOD manpower requirement. The post-mobilization option is by far the most cost effective, and least intrusive, and is the option chosen by Selective Service. The next section of the Report examines that option in detail, and steps taken to build an efficient and equitable standby Selective Service System.

The Standby Selective Service System presented in this report is markedly different from previous standby plans. We highlight the new system with respect to seven subsystems which make up the registration/induction process. The major changes are (1) reliance on the U.S. Postal Service (USPS) to conduct face-to-face registration; (2) the sort of registration forms by USPS into Random Sequence Numbers (RSN), the creation of computer data files in RSN order and the accelerated promulgation of induction orders; and (3) the reliance on operating, inplace, testable, Federal infrastructures to support the Selective Service in an emergency, i.e., Social Security Administration and Internal Revenue Service for "keypunch" support and DOD for computer, facilities, and personnel support. This support in no way compromises the administrative independence of the Selective Service and completely reserves for Selective Service the process by which claims for deferments and exemptions are adjudicated.

We also provide an analysis of the new Standby Selective Service System to determine how flexible it is likely to be in meeting Defense's requirements. Our analysis considered (1) our ability to achieve a given schedule and (2) our ability to achieve a planned rate of production. The total registration/induction system has the capability to meet the DOD induction schedule even with considerable slippage in the assumed timetable or a failure of the Selective Service and/or the AFEES to achieve a given rate of performance.

The report goes on to consider a number of additional concerns raised in the Conference Report and Statutory Changes with regard to the new post-mobilization plan. The report concludes with a Summary and Conclusions section which highlights steps already taken to ensure Selective Service's immediate ability to respond to an emergency military mobilization.

The DOD requirements

In 1977, DOD asked the Selective Service to develop the capability to start inductions within the first thirty days after mobilization (M+30), and to deliver 100,000 inductees to Defense by M+60, with 650,000 inductions to take place during the first six months of mobilization. This was based upon the worst case senario, namely that Selective Service would be the only source of untrained manpower.

As noted, the DOD requirements are stated as "inductions" and as such require the closest coordination between the Selective Service and DOD's Military Enlistment Processing Command (MEPCOM). In the "induction" process, the Selective Service:

Registers those subject to the MSSA.
Determines the order of those who will be called for service.
Orders registrants to take physical and mental examinations.
Issues orders for induction.
Classifies individuals.
Adjudicates claims for deferments, postponements, and exemptions.

The Military Enlisted Processing Command, through their 67 Armed Forces Examining and Entrance Stations (AFEES):

Provides physical and mental examinations.
Inducts qualified registrants into the Armed Services.

In order to understand clearly the implications of the Defense requirement on the Selective Service, we have worked with MEPCOM to determine the AFEES capability to process registrants during a military mobilization. Our analysis shows that the AFEESs have the ability to give at least 14,000 physical and mental examinations per day, 6 days per week during mobilization. This means that:

Historical analysis indicates that depending upon the time of the year, the Selective Service System must issue as many as 35,000 induction orders per day in order to guarantee that 14,000 registrants will reoprt to the AFEES to take physical and mental examinations. (Induction orders would be issued ten days before an individual is expected to report to an AFEES.)

Based upon a historical 50 percent physical and mental examination acceptanace rate, the system can induct 7,000 per day, 6 days per week.

The AFEES could accept registrants as late as M + 43 and still provide 100,000 inductions by M + 60.

Earlier delivery of registrants to the AFEES would allow them to operate below maximum capacity or the SSS/MEPCOM system to induct more than 100,000 by M+60.

Selective Service options.

Selective Service considered in detail the five options in terms of the ability each provides to carry out our mission. Before describing the options and the results of our analysis in more detail, it is important to note that there are a number of features which are common to two or more of these options. The most important of these are:

United States Postal Service will carry out the face-to-face registration.—USPS has agreed to undertake the task of face-to-face registration under all participatory registration options (Options 1, 2, 3 and 4). The USPS is attractive because it is a single command infrastructure with facilities and personnel, and a communication/transportation network extending to every corner of the country. Postal locations are widely known. USPS has provided similar services for the Department of State (passport applications) and for the United States Immigration and Naturalization Service (alien registration). USPS is capable of storing registration forms to central locations for data processing. The USPS has also agreed to joint tests of their capability to register draft eligible individuals. The first such test will be conducted later this year.

The Emergency Military Manpower Procurement System procedures will be employed wherever possible.—Both pre- and post-mobilization participatory registration options (1 and 2) will employ the procedures incorporated in the Emergency Military Manpower Procurement System (EMMPS). A major feature of EMMPS is that it eliminates pre-induction examinations and classification. After registration and a Random Sequence Number (RSN) lottery, all registrants will be administratively classified 1–A, ready for induction. Induction orders would be centrally issued in RSN order by the Director of Selective Service. After receiving an induction order, a registrant would either report to an AFEES for examination (and if found physically and mentally qualified, would be inducted,) or would request a deferment or exemption. Such requests would be processed by local boards.

A new data processing system will support all options.—Everyone who has looked at the current state of the Selective Service has concluded that the ADP system is inadequate. In order to immediately provide the capability to register and induct, the Selective Service and the Department of Defense have agreed that the United States Army Management Systems Support Agency (USAMSSA) will provide computer support for the operation of EMMPS. This is only an interim step. A joint Selective Service/MEPCOM computer center is planned for the Fall of 1980. The joint center will provide a single computer facility completely dedicated to the registration/induction process while preserving the operational and administrative independence of the Selective Service.

The Selective Service field structure will be reactivated in accordance with the requirements of each option.—The Selective Service will recruit and train local and appeal board members and will provide for the establishment of area offices under all options. In an emergency (Options 1 and 2), the Department of Defense will provide selected facilities and personnel temporarily detailed from military recruiting commands to augment and support area office operations. If Selective Service undertakes pre-mobilization classification of registrants (Option 3), area offices will be established and staffed.

Given these common features, the following discussion highlights the responsiveness, cost, structure and operating procedures of the Selective Service System under each option. (Cost and personnel requirements are based upon the assumption that the MSSA will be amended to require women to register with the Selective Service.)

Option 1. Post-Mobilization Participatory Registration. The discussion of this option reflects major changes from the post-mobilization plans previously presented by Selective Service. Our new plans provide that the USPS register one year of birth group (4 million men and women) four days after notification of mobilization (M+4). USPS employees will review completed forms, witness the registrant's signature, and provide the registrant with a copy of the form as a receipt. Two weeks later USPS will begin continuous registration of 18 year olds. Selective Service will conduct a lottery on the evening of M+4. The USPS will sort registration cards by lottery number and forward sorted data to IRS and/or SSA regional offices. Selective Service reserve officers will be located at IRS/SSA regional offices and will receive and ensure the security of the registration forms. The IRS/SSA will keypunch registrant data which will be transmitted to a central computer center. The Director of Selective Service, acting for the President and using EEMPS, will issue induction orders starting on M+7.

Concurrently, 434 area offices will open at predesignated recruiting office locations. Fifteen hundred pre-trained personnel will transfer from the Armed Services Recruiting Commands to Selective Service to augment reserve officers already assigned to Selective Service. Area offices will provide administrative assistance to local boards. State Headquarters will also be reestablished to provide administrative assistance to area offices. Regional offices will continue to support both.

Under this option, Selective Service expects to exceed the current DOD requirement for inductees. Registration will occur at M+4 and induction notices will be issued starting on M+7. Inductions will begin on M+17 at the rate of 7,000 per day, the estimated capacity of MEPCOM. With this sustained rate, 100,000 inductions could be made by M+35 and 650,000 inductions by M+125.

The estimated yearly recurring cost for this option, i.e., base level cost to keep the Selective Service System in a true standby posture, is $9.7M.

Option 2. Pre-Mobilization Participatory Registration. The USPS would conduct face-to-face pre-mobilization registration in largely the same manner as they would under emergency mobilization plans. Initially, USPS would conduct a start-up registration of one year of birth group (approximately 4 million 19 year olds) over a period of about a month. Continuous registration of 18 year olds would start shortly thereafter. Registration would occur during regular USPS business hours at classified post offices. The IRS/SSA would key only the registration data for the initial group. Data generated from continuous registration and change of address notices would be processed by Selective Service.

In the event of mobilization, the Director of Selective Service, acting for the President, would immediately classify registrants 1A and begin to issue orders for induction. Registrants would begin to report to the AFEES the morning of M+10, seven days ahead of the Option 1 schedule.

As under Option 1, 434 area offices would be established at Recruiting offices upon mobilization, and the Recruiting Services would provide 1,500 pre-trained people to assist.

Under Option 2, Selective Service could order sufficient numbers of registrants on M-day so that the AFEES could immediately induct 7,000 per day, the maximum capacity of MEPCOM. At this rate, 100,000 inductions would be made by M+26 and 650,000 by M+117.

Estimated cost for Option 2 is $11.3M in one-time costs and $23.8M in recurring costs. This is an additional $14.1M in annual recurring costs above the costs of post-mobilization registration (Option 1).

The additional one-time pre-mobilization costs would be $5.8M for the USPS to conduct the initial registration and $5.7M to the IRS/SSA to key these data. The increase in recurring costs would include $5.8M to the USPS to conduct continuous registration, $4M for additional rent, travel, printing, reproduction, and other services. About $4.3M in additional costs would be for increased personnel: three hundred twenty additional people would be needed in the regional offices to key and input registration cards to record address changes. Fifty-nine additional people would be needed for management, supervision and staff support.

Option 3. Pre-Mobilization Registration and Classification. If the President directs pre-mobilization registration and classification, the Selective Service would modify its Emergency Military Manpower Procurement System (EMMPS) procedures.

Under this option, the USPS would register individuals as before. Registration data for the first group would be keyed by the IRS/SSA. Four hundred thirty-four area offices would be established to handle follow-on data entry and would, in addition, work with local draft boards in classification. At the same time, 97 appeal boards would be established. Registrants would be given continuous opportunity to appeal or petition for change of classification.

Pre-mobilization classification of registrants under Option 3 would not improve mobilization response times. First inductions would still occur at M+10. One hundred thousand inductions would be made by M+26 and 650,000 by M+117. The benefit of classification before mobilization is not response time, but in a more orderly induction process, since orders would be issued only to those already classified. It should be noted, however, that individuals who did not request reclassification in the pre-mobilization period might still do so during mobilization.

The additional costs incurred by reinstating pre-mobilization classification would be determined in part by the numbers classified. Two sub-options were considered: (1) classify only enough registrants to insure the delivery of 100,000 qualified inductees, and (2) classify an entire year of birth group annually.

In order to provide 100,000 qualified inductees, Selective Service would classify approximately one million registrants. Additional staff would be needed to handle classification questionnaires, make and maintain registrant files, request additional documentation when required, decide administrative reclassifications, support local boards, update data bases, notify registrants of results, arrange for personal appearances, and respond to queries. The one-time costs would increase by about $2.6M and recurring costs would increase by $12.0M—$5.7M for increased systems support, $0.2M for ADP support, and $6.1M for additional personnel.

If an entire year group (about 4 million men and women) is classified each year, total costs would increase significantly, but with no increase in responsiveness. One-time costs would be about the same for classifying 4 million as for classifying one million. However, recurring costs would increase—$23.1M for additional staff and $6.4M for system support, e.g., communications, rent, printing, travel, and services. About 1,800 additional people would be needed to handle the additional 3 million classifications, and another 450 people for management and supervision.

Option 4. Pre-Moblization Classification and Examination. Under this concept, registrants with specified classification would be ordered to an AFEES for pre-induction examination. Those found acceptable would be available for induction after a check of physical status. Army regulations provide that physical examinations are valid for one year. If an individual is inducted within a year after his examination, only a physical inspection is required. If the delay is more than a year, a new examination would be called for.

Responsiveness would be improved because MEPCOM is able to process pre-examined individuals more quickly. Current estimates are that MEPCOM could accept up to 17,500 pre-examined individuals per day and that about 16,000 of these (92 percent) would be found acceptable and inducted.

As with pre-mobilization classification, two sub-options are: (1) examine sufficient numbers of classified registrants to insure 100,000 qualified inductees and (2) examine an entire year of birth group annually. In either case, induction orders would be issued on M–day, and inductions would begin at M+10, initially at a rate of 16,000 per day. If a portion of a year group is examined, 100,000 qualified males could be inducted by M+16 and 650,000 individuals could be inducted by M+18. If the entire year group is examined in the pre-mobilization period, then the total 650,000 inductions could be made by M+56. Both cases exceed DOD's stated requirements for inductees.

Under this option, additional costs would be incurred by both the Selective Service and the Department of Defense. If a decision is made to examine only enough people to meet DOD's 60-day requirement, Selective Service would plan to order 600,000 registrants for examination. Additional Selective Service resources would be needed to process examination results, schedule transportation for the registrants to take examinations, answer queries, and schedule the additional workloads for local boards. One-time costs would not increase in either case since area offices would already be operational. The additional recurring costs would total $11.4M if part of year group is examined and $58.3M if an entire year group is examined annually.

The costs of the examinations would be borne by the Department of the Army. The Office of the Army Deputy Chief of Staff for Personnel provided an estimate of $75.00 per examination based on the expected use of contract physicians. Re-examinations would cost about $10,000. Using these projected costs, examining part of a year group would cost about $45M and examining an entire year group (approximately 3.6 million) would cost about $266.0M.

Option 5. Non-Participatory Registration. The Congressional Budget Office (CBO) and the General Accounting Office proposed that Selective Service consider relying on existing computer files to form a list of draft eligibles instead of planning on a traditional face-to-face registration. We have studied this proposal in terms of (1) our ability to construct a list of sufficient size and accuracy from which to induct the required personnel, and (2) the impact of such procedures on the Privacy Act, on other related statutes, on the MSSA, and on Constitutional questions of equal protection and due process.

The Selective Service, in order to carry out the draft, needs the name, address, and birth date of males subject to the MSSA. (If females were subject to the MSSA, we would also need to know the sex of the registrant.) At a minimum, we need valid data (correct addresses) on sufficient numbers of people to insure we can induct the required number of people; 5:1 order to induct/induction ratio is planned. A master list must be available no later than M+20 to insure that we can deliver the first inductees to Defense by M+30.

The most comprehensive data base available is the master Social Security Administration (SSA) file which contains all the needed data except current address. Based upon our survey of five Federal agencies (Agriculture, HEW, Justice, Commerce, and Treasury); and the Education, Motor Vehicle and Voter Registration agenciese in six states, we found the most comprehensive source of "current" address is the Internal Revenue Service (IRS).

The Congressional Budget Office, using Department of Labor employment statistics, has estimated that 85 percent of the 19-to-20 year old population work some time during each year, and therefore probably filed an Income Tax Return. The Bureau of the Census reports that the mobility rate of the prime age group (18–26) ranged from 16 to 34 percent during the period 1975 to 1976. Our best estimate is that, unless a master list is updated regularly, approximately 25 percent of the addresses will be invalid by the end of a year. A merged SSA/IRS list will be most accurate immediately after April 15, and will become progressively inaccurate until the following year's filing. Given our estimates of an 85 percent IRS coverage and 25 percent mobility rates, a master list with "valid" addresses may capture as little as 60 percent of the draft eligible population. This, however, appears to be sufficient to meet DOD's induction requirements.

As noted, any registration system must be able to provide a list in about twenty days. CBO indicates that these agencies "already have a major tape exchange program in effect, and they estimate it would take about three to five days to merge the files. . . ." However, in response to inquiries from Selective Service, Social Security indicated it would take a month to deliveer the data, and IRS indicated two months to perform the match and create ethe merged file. It appears that in order to insure a master file, we should plan on merging SSA and IRS data in the pre-mobilization period.

While the construction of a master list from SSA and IRS computer files is feasible, questions have been raised on privacy and constitutional guarantees of equal treatment and due process. All Federal agencies surveyed advised that not only would the Privacy Act of 1974 have to be admended, but prohibitions on individual agencies would also have to be changed. (IRS has specific prohibitions in Title 26.) Moreover, IRS believes that, "to use the Internal Revenue Service system for the purpose suggested would adversely effect our extremely important mission in a number of ways. It may have a significant impact on compliance in the area of withholdings and return filings . . . if withholding records are used in the military induction process, draft protestors would be presented with an irresistible temptation to become tax protestors."

The Selective Service General Counsel has advised that non-participatory registration would require an amendment to the MSSA, and that in his view such an amendment would violate both due process and equal protection guarantees of the Constitution.

Under present plans, not everyone eligible to serve is likely to be called. A system in which induction into military service is systematically reserved for those who have social security numbers, can be located because they have filed an Income Tax Return, and have not moved, does not appear to be a reasonable means for the Congress to carry out its purpose. This is particularly true since there are other ways open to the Congress—both pre- and post-mobilization face-to-face registration—which guarantee due process under the law. The argument that merged computer files will save money and avoid generational conflict does not appear compelling enough to violate Constitutional guarantees.

It is often argued that face-to-face registration will not provide more names and addresses than non-participatory registration, and, therefore, the two systems are equivalent. This does not appear to be correct. We estimate a face-to-face registration will provide a list over 90 percent complete compared to as little as 60 percent by means of computer merger. More importantly, as long as we give everyone a fair opportunity to register, we will legally account for 100 percent of the population eligible for military service under the MSSA, i.e., those who do not register are in violation of the law and subject to legal penalty.

Non-participatory registration also appears to violate standards of equal protection because two people who are identical, except that one recently moved, would be treated differently in terms of the probability they would have to serve. The administration of such a scheme would produce such disparity of treatment of persons similar in all legally recognized ways that there can be no question that there would not be equal treatment.

In reviewing the above arguments, it is the position of the Director of the Selective Service that while it is technically feasible to construct a master list of draft eligible individuals, and meet the DOD requirements, such a system would be neither fair nor equitable. Construction of a master list during peacetime raises serious privacy questions. Moreover, such a system would effectively excuse as much as 40 percent of the eligible population from military service. The system would not be perceived as fair or equitable and could be challenged successfully as a violation of the Constitution. For these reasons, the Director has concluded that a non-participatory registration scheme is not a viable system for Selective Service.

Recommendation

Our analysis of non-participatory registration suggests that while the system is technically feasible it is not likely to be perceived as fair or equitable and would be subject to serious Constitutional challenge. Moreover, such a system does not seem necessary in light of the projected ability of all options to surpass the required DOD induction schedule. For these reasons, the non-participatory registration concept is not recommended.

Our analysis of the various face-to-face registration options suggests that the post-mobilization plan is preferable. Table 1 shows the responsiveness, number of pre-mobilization full- and part-time personnel, and initial and recurring costs for each option. The post-mobilization option should substantially exceed De of pre-mobilization full- and part-time personnel, and initial and recurring costs the least. While costs and staffing should not be the determining factor, the reduced delivery time provided by the other options is redundant and unnecessary. The post-mobilization option, subject to field testing later this year and the international situation at any time, is recommended as the basis for an effective Standby Selective Service.

TABLE I.—SUMMARY OF OPTIONS

New summary of options	DOD requirement	Postmobilization registration	Premobilization registration	Premobilization registration with classification		Premobilization registration with classification and examination	
				Part of year group	Entire year group	Part of year group	Entire year group
Responsiveness:							
1st inductions	M+30	M+17	M+10	M+10	M+10	M+10	M+10
100,000	M+60	M+33	M+26	M+26	M+26	M+17(6)	M+16
650,000	M+180	M+124	M+117	M+117	M+117	M+108	M+56
Premobilization employment:							
Full time		116	495	1,080	2,885	1,535	4,900
Part time		715	715	300	100	200	0
Premobilization costs:							
SSS initial			11.5	14.1	14.1	14.1	14.1
SSS recurring		9.7	23.8	35.8	65.4	47.2	123.6
DOD recurring						45.0	266.2
Total		9.7	23.8	35.8	65.4	92.2	389.8

Note: M—Mobilization day.

Standby Selective Service System

Calendar of Events

In the event of a national emergency and the reinstitution of the draft, the Selective Service, operating under EMMPS, will initiate the following process:

Time	*Event*
M	The President declares a national emergency and orders that registration be reinstituted.
M+1–M+3	Civilians in specific year of birth groups are directed to their U.S. Post Office facility to register.
M+4	The USPS carries out the registration and ships completed forms to regional postal processing centers.
	The Selective Service conducts a lottery after the registration has been completed and establishes the "order-of-call" based on Random Sequence Number (RSN).
	Selective Service area offices are opened under an agreement with the Department of Defense to turn over recruiting command facilities and personnel to Selective Service.
M+5	The USPS sorts registration material by RSN and ships the cards to data entry facilities.
M+6	The Internal Revenue Service and/or the Social Security Administration data entry facilities receive the registration cards and begin to keypunch the data in RSN order-of-call sequence. Keypunched data are transmitted to the central Selective Service computer.
	Congress authorizes the President to induct personnel into the Armed Forces.
M+7	The Director of Selective Service pursuant to regulations issued by the President under Section 5(d) of the Military Selective Service Act (MSSA) issues orders for induction in the proper RSN "order-of-call".
M+8–M+17	Registrants receiving orders for induction can: Report to AFEES for processing, request an exemption or deferment, or do neither.

If a registrant reports to an AFEES, he will receive a physical and mental examination, and if found fit, will be inducted.

A registrant may request reclassification by filing a claim with an area office of the Selective Service.

Under EMMPS, after a second order for induction had been sent, a list of those who neither appealed or reported to an AFEES will be sent to the Enforcement Division in the Department of Justice for appropriate action.

M+18 The first inductees wil report to their assigned military training bases.

M+34 The system, working at maximum capacity and without delays, will have processed 100,000 inductees.

The schedule outlined above is substantially different from previous Selective Service plans. We can highlight the new Standby System with respect to seven subsystems which make up the registration-to-induction process. The subsystems are:

A registration process that is rapid and reliable.

A method of entering registrant data quickly into an ADP system.

An ADP system (hardware and software) that can handle the registrant and claims populations in the time required.

A system for the promulgation and distribution of orders for induction.

A claims process that can quickly insure all registrants' rights to due process are protected.

A field structure than can support the claims process.

Registration

The Selective Service and the United States Postal Service have entered into a Memorandum of Understanding which provides that the USPS will conduct a registration of up to 4 million draft eligible (two male year of birth groups or one male/female year of birth group) within 72 hours of notice. Postal employees will act as registars and check completed registration forms for accuracy and eligibility. They will sort completed registration cards by date of birth, deliver sorted cards to data processing sites, and undertake a continuous registration for those subject to the MSSA who were not required to register immediately after mobilization. The two agencies have also agreed to work together to fully implementation plans, i.e., training and storage of forms, etc., and to test the system in August 1980. The USPS has also agreed that even without these last steps they could undertake an emergency registration within seven days.

This agreement is based upon the results of a detailed analysis of existing postal windows in each zip code area in three representative states, estimates of the twenty year-of-birth population in each area and projected transaction times of 5 minutes and 2.5 minutes per registration. (Postal officials indicate that their average transaction time is approximately one minute.) For example in the state of Illinois, using the most conservative estimate of five minutes per registration transaction, and without taking any special measures, there are sufficient postal windows in 97 percent of the urban post offices and 98 percent of the rural windows. Postal officials have agreed that where there appears to be a lack of postal windows, they will open additional "windows" using tables and desks. In any event, postal facilities will stay open, so that no one required to register with Selective Service will be turned away.

We have also entered into an agreement with the Department of State whereby they will, operating from their overseas embassies and consulates, conduct an initial registration within 72 hours of notification and will transmit the data to the Selective Service Headquarters within 96 hours.

Data Entry

One of the most fundamental changes in Selective Service plans is the development of a new concept for conducting the lottery, entering the data into the central computer and issuing the first order for induction. The previous plans required that an entire year group—2 million records—would have to be keypunched and verified before a lottery could be held and the first induction notice issued. It was estimated that this would take 1,300 persons per day for ten days.

In sizing the keypunch requirement, we found that, in fact, there was no need to input into the computer a complete year group before we held the lottery or issued induction orders. The important thing is that induction orders are issued in Random Sequence Number (RSN) order. This can be done by holding the lottery immediately after the close of registration, sorting the completed registration forms according to RSNs—a task that the USPS has agreed to undertake—and entering registration data into the computer in RSN order. Under this concept, induction notices can be issued to the first inductees while the registration data for those to be called later is still being processed. This "pre-sort" scheme substantially reduces the requirement for keypunchers by spreading the required work over the time available to Selective Service.

We estimate that at a minimum, we need to process 35,000 registrations forms a day, and this would require about 115 keypunch operators compared with 1,300 as previously planned. If we process more than 35,000 records per day, we would reduce the number of days it would take us to keypunch the registration data, but would not increase our ability to induct.

Under present plans, we will make use of the keypunch capacity of the Internal Revenue Service (IRS) and/or the Social Security Administration (SSA). Both agencies have agreed that in event of a national emergency, they could suspend part of their operations to support Selective Service. The IRS has over 4,000 data entry terminals located in ten regional centers, which are conveniently located near USPS centers. During the tax return period of January to June, the IRS has about 6,000 data entry personnel onboard. During the non-tax period of July to December, the staff is reduced to about 1,500 personnel. The SSA advises that they could do the entire job using some portion of the 1,200 terminals located at Wilkes Barre, Albuquerque and Salinas. In order to provide a margin of error, both agencies have agreed to plan for a production rate of 100,000 registration forms per day.

Automatic Data Processing Support

The present Selective Service computer center will not support a mobilized Selective Service System. Current hardware cannot be expanded to support EMMPS. In deciding how best to meet our computer needs, we considered that:

Selective Service has an immediate need for a substantial computer capability upon mobilization.

There is a very limited need for a computer during standby.

Any new ADP system should facilitate the entire registration-to-induction order process. This requires that we consider MEPCOM's ability to process registrants in support of Selective Service, as well as our needs to support our area offices and local boards.

To provide short term ADP capability, we have developed a plan that will ensure we have (1) an immediate capability to, in the least, process registration data and issue orders of induction; and (2), within a year, provide for improved interface with MEPCOM and our area offices.

We have a formal agreement with the Department of Defense and the Army that the USAMSSA computer center will support EMMPS. The compatability of EMMPS and USAMSSA computer was tested and demonstrated in December 1979.

The USAMSSA agreement is only temporary. As a longer term solution to our ADP requirements, we have also agreed that Selective Service and MEPCOM will develop a joint computer center, using a surplus IBM 370/165 computer belonging to Defense. We believe that a joint center has many advantages. It would reinforce the link between the two organizations, e.g., after mobilization the volume of data transmitted each day would be substantial and a joint facility would minimize delay and the need for an expensive telecommunication network. It would put Selective Service on a computer solely dedicated to the military manpower procurement mission, and would help insure the coordination of manpower flows from Selective Service to AFEES. The joint computer center will also support our local boards through the 434 area offices. Computer terminals in each area office will be linked to the IBM 370/165 and would be used to input and update registration and appeals information. Current budget, and requests before the Congress, are sufficient to carry out our plans and develop a joint Selective Service/MEPCOM computer center. It will, however, be necessary to advance the procurement of terminals from FY82 to FY81. Accordingly, we are asking for an increase in FY81 funds of $4.5M for this purpose.

Promulgation of Orders for Induction

Under EMMPS, there will be a single national draft call based upon random selection. Actual induction orders will be issued by the Director of Selective Service, by direction of the President and under authority of section 5(d) of the

MSSA. Using the Selective Service master registration file, which will be created and maintained by RSN, induction orders will be transmitted as Western Union Mailgrams. The Mailgrams will contain the following information:

Identification of the inductee.

Orders to report at a specific time to a designated AFEES.

Information on procedures to follow if unable to comply with the induction order.

Information on exemption and deferment rights.

A simple claims form.

The address of the inductees local board/area office to which claims should be sent.

The area office, upon receipt of a claim will notify Selective Service Headquarters and will process the claim according to standard Selective Service procedures. MEPCOM will also be notified of individuals ordered to AFEES and will report their status to Selective Service Headquarters.

Claims Processing and the Selective Service Field Structure

Under EMMPS, after receiving an order for induction a registrant may apply for a deferment or exemption. It has historically been, and will continue to be, the task of local draft boards supported by Selective Service Area Offices to adjudicate such claims. It is imperative that a claims structure be in place when we start issuing orders for induction. Under present plans, this is likely to be as early as M+7 days. We are, therefore, developing plans and procedures for the selection and training of local board members. We are requesting $1.1M in fiscal year 1981 and approximately $250K per year thereafter for this purpose. Included in these totals are funds for three additional full time positions for management of this program.

We have also streamlined our procedures to reconstitute essential area offices in support of local boards. On November 28, 1979, the Deputy Secretary of Defense and the Director of Selective Service agreed that, "in order to facilitate the operation of the Selective Service in support of the manpower procurement needs of the Department of Defense, we must better coordinate our planning and post-mobilization manpower system. In addition, it is appropriate that DOD, like other Federal agencies, provide support to the Selective Service during a national emergency. Such support from DOD might include but not be limited to, computer and data processing, selected personnel and facilities. However, DOD should not in any way be involved in the process by which the Selective Service adjudicates claims for deferment or exemption."

Selective Service has 715 military reservists who are a cadre to reactivate the system. We have also entered into an agreement with Defense to take over specific Armed Forces Recruiting Offices within 24 hours after mobilization. Moreover, 1,500 Recruiting Service personnel will augment the Selective Service reservists for about 45 days after mobilization. These personnel will be identified by name, provided training and will participate in training exercises and field tests.

We have ordered a revision to this summer's annual training, in order to test these new procedures. We will "mobilize" each state headquarters and "reestablish" area offices. This should allow us to work out problems before NIFTY NUGGET 1980.

Analysis

The capability of the Selective Service System to induct people into the Armed Forces depends upon (1) achieving, in a timely manner, the schedule of events and (2) achieving the appropriate rates of production in the various subsystems, e.g., physical and mental examinations per day, etc. The robustness of the new plan is shown by comparing the following four figures. Each figure shows the number of males processed on the vertical axis, the calendar of events (time) on the horizontal axis, each line is a different subsystem, and the rate of production for each subsystem is the slope of the respective line.

Figure 1 shows how the system would work if Selective Service and the AFEESs achieved both the schedule and the planned production rates. As is evident, first inductions start 12 days ahead of the DOD timetable, with 100,000 inductees delivered to Defense on M+34, 26 days ahead of schedule.

In order to examine the flexibility of the plan, we considered what would happen if we achieved the schedule of events, but operated at the minimum rate necessary to meet the DOD delivery schedule. In such a case, the data entry, induction orders, the AFEES subsystem could work well below their maximum mobilization capacity (2 shifts, 6 days per week) and still not jeopardize the schedule. In other words, staff capacity required for normal pre-mobilization operations, when expanded to a two shift, 6 day per week operation, can more than meet post-mobilization requirements, and provide a hedge against our failure to achieve our schedule of events. The extent of this hedge is seen in Figure 3.

Figure 3 shows that, if the AFEES operates at its stated post-mobilization capacity of 14,000 mental/physical examinations per day, the Selective Service could issue its first induction order as late as M+32, 25 days later than originally planned, and still provide 100,000 inductees by M+60.

The above example assumes a failure in the schedule or rate of production, i.e., a failure by the Selective Service or the AFEES. What if both failed? Clearly, there are combinations of failures in both parts that would result in a system wide failure. What is more important, however, is that substantial combinations of failures in both systems which would be sustained without compromising the delivery schedule. For example (Figure 4), if the USPS could not register until M+5 and data entry began not two days, but four days after registration (M+9) and induction letters did not go out one day, but two days after keypunching (M+11), and if we allowed fourteen days to report to the AFEES, instead of ten days, the AFEES would still provide a hedge in meeting DOD requirements. In sum, over a reasonable range of failures in both the Selective Service and the AFEES, the system is capable of inducting 100,000 people by M+60.

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FIGURE 1 -- Timetable: Peak Capacity

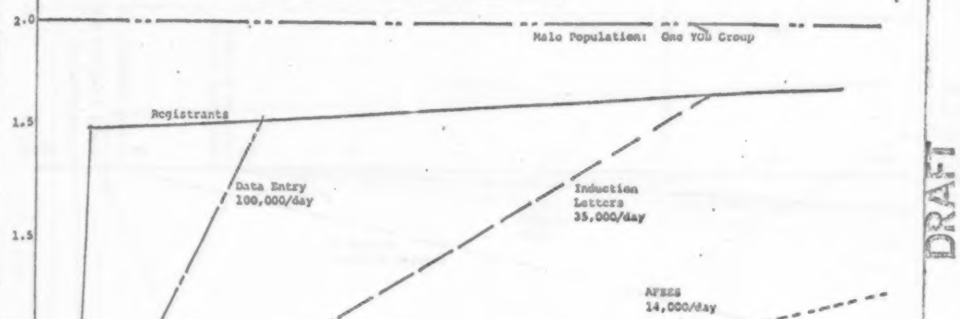

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FIGURE 2 - Timetable: Minimum Rate to Deliver 100,000 by M+60

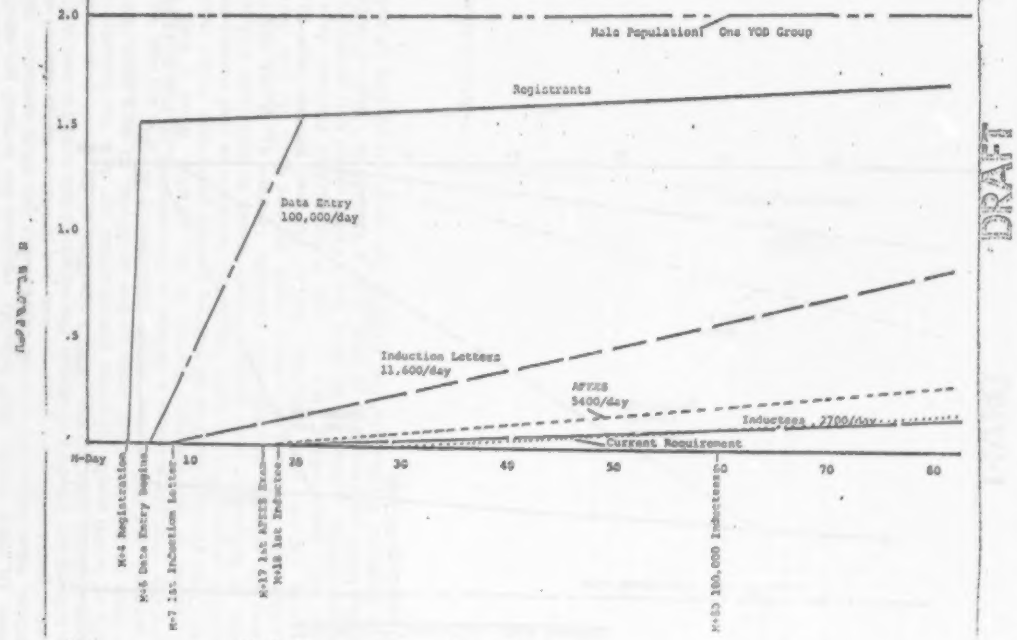

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FIGURE 3 - Timetable: Minimum Requirement

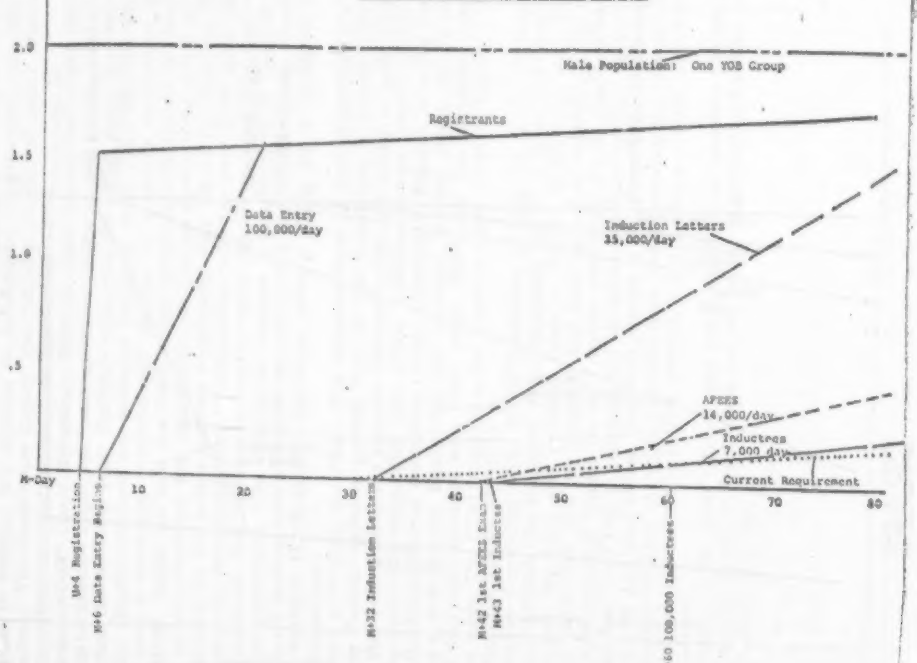

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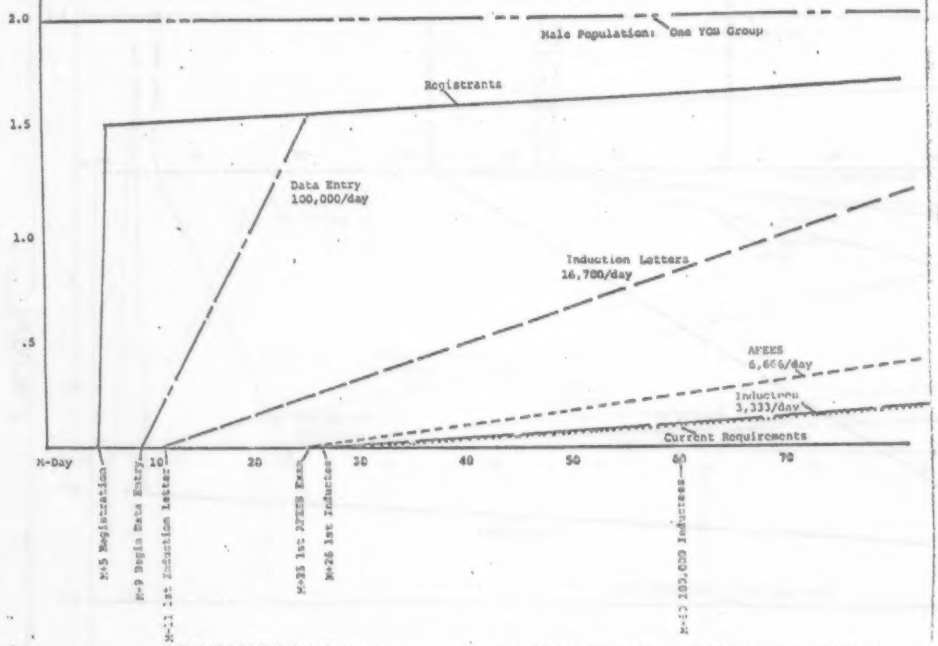
FIGURE 4 -- Timetable, Assuming Several System Failures



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CONFERENCE REPORT AND STATUTORY CHANGES

The 1980 Defense Authorization Act requires Selective Service to recommend "changes in existing law relating to registration, classification, selection and induction." The Conference Report also raised a number of points relating to post-mobilization registrations plans. Specifically:

"Order-of-Call" Court Decisions.—There is some concern that under EMMPS, Selective Service might not issue induction orders in the proper order-of-call, and that the resulting legal challenge could stop the entire draft. The Selective Service General Counsel has reviewed pertinent court cases and has advised that even a successful "order-of-call" defense to a specific prosecution under the MSSA would not void the draft. Court decisions with respect to "order-of-call" merely reflect the well established rule that an agency must follow its own regulations. In the past rules and regulations were issued the National Headquarters, the individual State Headquarters, and the over 3,000 local boards with the result that local boards inadvertently did not always follow our rather complex procedures. The order-of-call defense is less likely to be successful in the future because under EMMPS we will have a single order-of-call controlled from National Headquarters operating under a single set of simplified rules and regulations.

Extent of Testing the Plan.—The Memorandums of Understanding with supporting Federal agencies provide that we test procedures in August 1980. We have also restructured the summer training to test our ability to mobilize State Headquarters and reestablish area offices. Selective Service reserve officers will visit the Armed Forces Recruiting Offices scheduled to support Selective Service during a mobilization. Equipment and personnel in these offices will be inventoried and local contacts with GSA, OPM, USPS and the telephone company will be made. The FY81 budget also has funds to allow Selective Service to fully participate in NIFTY NUGGET 80.

Computer Capability.—The EMMPS program is installed on the Defense Department's USAMSSA computer. In an emergency, Selective Service could register and induct. We have also provided funds in FY80 and FY81 to take over a surplus DOD IBM 370/165 computer and have agreed to develop a joint SSS/MEPCOM computer center. We will request additional FY 81 funds, originally programmed for FY82, to purchase 434 computer terminals to fully support our local boards and area offices. This will provide a computer network completely dedicated to military manpower procurement and processing and will not only improve the registration/induction process, but will insure a rapid adjudication of all claims.

Agreement with state officials and other non-Federal agencies.—Under our new plans, the Selective Service does not rely on any agreements with either state or non-federal agencies.

Schedule for training Federal personnel in registration.—Each Memorandum of Understanding with a supporting Federal agency provides that personnel will be trained on appropriate aspects of Selective Service procedures. Selective Service, USPS, IRS and SSA will review registration forms to insure that they are compatible with normal operating procedures.

Likelihood that induction notices would survive potential court challenges.—The Selective Service General Counsel has reviewed all post-mobilization plans and procedures. Sections 5(a)(1) and 10(b) of the MSSA imply that local draft boards shall issue induction orders. At the same time, Section 5(d) of the Act authorizes a uniform national draft without regard to local boards whenever the President prescribes the use of the lottery. The section places the issuance of induction orders under such rules and regulations as prescribed by the President. Selective Service plans, through the EMMPS procedures, to issue induction orders under authority of this section and is developing updated regulations. To insure that the authority to issue induction orders is completely unambiguous, Selective Service recommends a statute change which will specifically grant the President authority to issue induction orders under Sections 5(a)(1); 10(b); and 5(j) of the MSSA.

The General Counsel has advised that the registration and induction system may be vulnerable to legal challenges if a claims structure was not in place at the time of induction. Accordingly, we are planning to undertake the selection and training of local board members in fiscal year 1981.

The General Counsel has also advised that to meet current Constitutional law requirements of equal protection, any system of registration for and induction into the armed forces must include both men and women. Accordingly, the Selective Service is recommending an amendment to the MSSA to provide for the registration and induction of men and women.

At this time we know of no other legal questions pertaining to a post-mobilization registration plan.

Registration and Induction of Women.—The Selective Service and the Department of Defense agree that any future draft should be applicable to both men and women, because (1) it would be inequitable to restrict registration and induction to men since women can and currently do fill substantial, essential military requirements; and (2) the evolution of substantial relationship standards of equal protection in gender renders an all male draft constitutionally suspect.

The Department of Defense has also advised that under the present state of the law, they assume the validity of current gender based combat restrictions, whether accomplished by statute or policy. In recognition of present combat restrictions, DOD has proposed, and Selective Service supports, a change to the MSSA to provide standby Presidential authority to register and classify both men and women, to randomly induct men only in sufficient numbers to fill combat positions and to maintain a replacement pool for those positions, and to randomly induct men and women on an equal basis to fill non-combat positions. We have been advised that given the above, Defense would not require women within the first 60 days, i.e., they would not be part of the 100,000/M+60 requirement, and that 80,000 women would be required over the period M+90 to M+180. These women would be part of the total 650,000 six-month requirement.

Summary and conclusion

The Selective Service, over the last several months, has completely revised the plans by which it will register and induct draft eligible people into the Armed Services. We believe that we now have a capability to respond in an emergency. The changes which have provided this new capability are:

An agreement with the United States Postal Service to conduct registration at their 34,000 postal offices throughout the United States, and with the Department of State to conduct registration overseas.

An agreement with the Internal Revenue Service and the Social Security Administration to keypunch completed registration forms.

A procedure to expedite the induction process by sorting and processing completed registration forms in Random Sequence—Lottery number order.

The development of a simplified procedure to issue induction orders, claims information and forms.

Agreements with the Department of Defense to:

Support the Emergency Military Manpower Procurement System (EMMPS) on an Army computer until we can build a joint SSS/MEPCOM computer center, which will be completely dedicated to military manpower procurement and processing, peace and war.

Provide to Selective Service, 434 Armed Forces Recruiting Stations and 1,500 personnel to facilitate the reestablishment of area offices.

While an immediate reactivation of the system, incorporating these changes, would be difficult and could not be accomplished in the minimum times suggested in this report, the actions already taken should enable us to meet the minimum needs of the Department of Defense. Selective Service is committed over the months ahead, working with supporting Federal agencies, to refine our plans, develop operating procedures, train personnel and test our ability to meet the emergency military manpower requirements of the Department of Defense.

(b)

PRESIDENTIAL RECOMMENDATIONS FOR SELECTIVE SERVICE REFORM

A Report to Congress
Prepared Pursuant to
P. L. 96 - 107

February 11, 1980

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RECOMMENDATIONS

FOR

SELECTIVE SERVICE REFORM

EXECUTIVE SUMMARY

On November 9, 1979, the Defense Authorization Act of 1980 (P.L. 96-107) became law. Section 811 of that Act called for the President to send to the Congress a plan for the fair and equitable reform of existing law providing for the registration and induction of persons for military service. The Congress asked for a review of ten issues that have been grouped into the following broad topics:

- Revitalizing the Selective Service System
- Induction authority
- Meeting the Armed Forces' personnel requirements
- National service

To review these issues, the Administration convened an interagency task force that examined initiatives to maintain and improve our active and reserve Armed Forces, and our capability to mobilize trained and untrained manpower in the event of a national emergency. This report presents the findings of the interagency task force.

REVITALIZING THE SELECTIVE SERVICE SYSTEM

The active and reserve forces were never intended to fight without augmentation by draftees in the event of a major national emergency. Since 1973, however, the Selective Service System (SSS) has been reduced to a planning and training organization of less than 100 full-time personnel supported by reservists. The capability of a standby SSS to process untrained manpower as part of a potential mobilization has been a source of concern. Therefore, a variety of steps are called for to enhance the Selective Service System's capability to mobilize manpower.

In his State of the Union Address on January 23, 1980, the President called for revitalizing the Selective Service System. He announced his intention to resume registration in mid-1980 for all those born in 1960 and 1961. Those who will turn 19 during 1981 will register in January, and continuous registration of 18-year olds will also begin in January.

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To register, an individual will fill out a simple form (name, address, sex, birthdate and social security number) at a local post office. After the SSS receives the form, the registrant will be sent an acknowledging receipt. No draft cards will be issued. No classification or examination of the registrant will be required.

The President would have to seek additional authority from the Congress before anyone in the pool of registrants could be inducted into the Armed Forces. He has no intention of doing so under present circumstances.

The decision to revitalize the Selective Service System and to renew registration will substantially improve the Selective Service's ability to respond. While the system will still be in "standby", there will now be an actual registration, rather than a registration contingency plan. The other components of the system will also be improved. The steps to be taken include providing the computer capacity to process data on the registrants; developing a process for recruiting and training local draft board members in the event of a mobilization; and planning a system for processing claims and appeals.

Selective Service has provided for interim computer processing adequate for registration and for any contingency that may arise. Selective Service has also developed a long term plan for a joint computer center to be shared with the Defense Department's Military Enlistment Processing Command. Registrant records within this computer center would be accessible only to authorized SSS employees. In the event of mobilization, the Emergency Military Manpower Procurement System assures an orderly process from registration through examination and classification to induction and training.

To plan for the availability of trained local boards, should mobilization ever be necessary, the SSS will work with the Governors over the next 18 months to develop a process for recruiting and training members of local boards. The boards would thus be prepared to process claims and appeals. This would insure the equity of the process.

The local boards would have to be supported by area offices, but creating and staffing these at the time of mobilization would be extremely difficult. Hence, the plan provides that the SSS would use space in 434 military recruiting service offices at mobilization. SSS would also use computer terminals in the recruiting offices. Their staffs would be pre-trained and ready to carry out the SSS mobilization mission.

Carrying out these steps requires that the President's FY 1980 supplemental and 1981 amended budget requests for the Selective Service System be enacted.

INDUCTION AUTHORITY

Congress asked that three questions be examined concerning Presidential authority to induct people into the Armed Forces: The desirability of legislation to provide the President with induction authority in peacetime; whether there should be an Individual Ready Reserve (IRR) draft; and whether registration and conscription should extend to women.

With respect to the first question, the need for induction authority has been, and should continue to be, a matter of mutual agreement between Congress and the President. In any mobilization, the Administration would immediately submit legislation to amend the Military Selective Service Act to allow the President to begin inductions from the existing list of registrants.

The second question relates to manning our forces. The Individual Ready Reserve is a primary source at mobilization of pretrained individuals to bring forces to wartime strengths and to provide replacements for casualties.

The transition to an all-volunteer force brought longer periods of active duty for individuals, and reduced the period of reserve obligation and number of people serving in the IRR.

The FY 1981 Ready Reserve program concentrates on strengthening the Selected Reserve units so fewer Individual Ready Reservists would be needed to fill out these units in time of mobilization or war. Steps are also being taken to strengthen the IRR to correct the current shortfalls.

The appropriate mobilization manpower levels could be maintained through a voluntary system or through an IRR draft. In a peacetime situation, an IRR draft is neither necessary nor desirable and initiatives are underway to build such forces to appropriate levels without it.

The third induction authority issue the Congress has posed is whether women should be subject to registration and induction under the Military Selective Service Act. The President has decided to seek authority to register, classify and examine women for service in the Armed Forces. There are 150,000 women serving successfully in the Armed Forces today, and by 1985 it is estimated that there will be approximately 250,000 women in the Armed Forces.

However, the number of women who could fill needed job classifications in mobilization is dependent on military policy and legislative restrictions.

Under current military policy, women are not assigned to jobs involving close combat. The Secretary of Defense has stated his intent to continue that policy.

There are now also legislative restrictions involving the use of women in the Navy, Marines and Air Force. This Administration has asked Congress to remove the restrictions in order to allow the DOD discretion in deciding the best use of individuals in military service. The Administration has stated that even absent legislative restrictions we would continue a policy of not assigning women to close combat positions.

A substantial number of support jobs must be reserved for men so that they will be available if needed as close combat replacements. These factors would limit the number of women needed in the event of mobilization and thus prevent men and women from being inducted in equal numbers. Equity can be achieved by registering both men and women and then providing that they serve in proportion to the ability of the Armed Forces to use them effectively. Conscriptions would be based upon actual military personnel needs at the time.

MEETING THE ARMED FORCES' PERSONNEL REQUIREMENTS

In a national emergency, strong, well-trained active and reserve forces are essential.

The Administration has taken several steps with respect to the active forces to insure that we maintain our strength. Over the past three years, in spite of a difficult recruiting market, enlistment of high quality volunteers has remained high, first-term attrition has declined, and retention rates at the first reenlistment point have increased. In 1979, the services achieved a personnel level of 98.5 percent of authorized active duty strength. This is in line with levels over the past five years. However, the Department of Defense remains concerned about its ability to continue recruiting enough people of high mental ability and educational attainment. This is particularly true for the Army because it fares worse than the DOD average with respect to both of these rough measures of recruit quality.

Sustaining the AVF is not only a matter of attracting new recruits. It also depends on the Services' ability to retain personnel of high quality. Reenlistments must provide for a force of experienced career military personnel in order to operate and maintain an increasingly complex force. Service members who joined the AVF in the early years are remaining beyond their initial obligation at a satisfactory rate. First-term reenlistment rates have increased substantially, from 24 percent in 1973 to 34 percent in 1979. An even greater increase in first-term retention -- particularly in critical skill areas -- is the keystone of our strategy to reduce the need for new recruits.

While retention of first-term personnel is encouraging, retention of career personnel is a matter of concern, especially in the Navy. To aid in recruiting and retention, the 1981 budget includes an increase of $500 million for larger enlistment and reenlistment bonuses, expanded bonus authority, improvements in pay and benefits and increased travel allowances.

As for the Ready Reserve, Selected Reserve strength increased over 19,000 during 1979, for the first net gain in total Selected Reserve strength since 1974. None of the Reserve Components declined in strength. Most of the overall strength increase was due to improved retention; however, the Naval Reserve, Army Reserve and Army National Guard experienced significant increases in new recruits. Use of full-time recruiters and other actions taken to improve both recruiting and retention are expected to produce further increases in Army Guard and Reserve strength in 1980. Continued increases in unit strengths are projected in 1981 and beyond. Emphasis is being placed on better utilization of trained personnel and on more intensive and effective unit training programs. These include proposals to allow Guard and Reserve units to participate in major training exercises and overseas tactical deployments for training.

Finally, the Individual Ready Reserve strength of the Army increased by 16 percent in 1979, and is expected to continue to grow.

NATIONAL SERVICE

The Congress required that we examine and make recommendations with respect to:

> "The desirability, in the interest of preserving discipline and morale in the Armed Forces, of establishing a national youth service program permitting volunteer work, for either public or private public service agencies, as an alternative to military service."

The four generic models examined in the report are:

- Voluntary broad-based national service
- Compulsory broad-based national service
- Voluntary targeted national service
- Compulsory lottery-based national service

We recommend against any national compulsory domestic service at this time. We note that the volunteer force is adequate to meet projected defense personnel needs; that through programs operated by ACTION, Department of Labor and other agencies, State and local governments and the private sector, opportunities for voluntary service are widely available; and that the federal government supports a substantial program of targeted employment and training opportunities for disadvantaged youth. The Administration has proposed a major expansion of these in its new youth education and employment legislation.

The compulsory lottery-based national service alternative is the most promising of the four models examined in the context of this report. It should be studied further in contingency planning for any actual military conscription in a national emergency, bearing in mind the serious practical and conceptual problems raised in this report.

PART I

REVITALIZATION OF THE SELECTIVE SERVICE SYSTEM

INTRODUCTION

As part of the debate over the future of the Selective Service, the Congress, in the 1980 Defense Authorization Act, asked the President to address a number of issues pertaining to military manpower procurement policies and the appropriate posture for a "standby" Selective Service.

This part of the report addresses five of the issues posed by the Congress:

- The desirability and feasibility of resuming registration under the Military Selective Service Act;
- The desirability and feasibility of establishing a method of automatically registering persons under the Military Selective Service Act through a centralized automated system using school and other existing records, together with a discussion of the impact of such a registration on privacy rights and on other constitutional issues;
- Whether persons registered under such Act should also be immediately classified and examined or whether classification and examination of registrants should be subject to the discretion of the President;
- Such changes in the organization and operation of the Selective Service System as the President determines are necessary to enable the Selective Service System to meet the personnel requirements of the Armed Forces during a mobilization in a more efficient and expeditious manner than is presently possible; and
- Such other changes in existing law relating to registration, classification, selection and induction as the President considers appropriate.

On January 23, 1980, the President, while reiterating support for the All-Volunteer Force (AVF), called for the revitalization of the Selective Service System and said that he would send legislative and budget proposals to the Congress "so that we can begin registration and then meet the future mobilization needs rapidly if they arise." He found: That the international situation demanded an improved United States military posture; that part of this posture was the credibility of the Selective Service to respond in an emergency; and that an operating registration system was necessary in this context. In making his decision, the President ruled out non-participatory registration and the classification and examination of registrants at this time.

BACKGROUND

Since 1973, the Armed Forces of the United States have operated under an AVF concept. The last draft calls were issued in December 1972; statutory authority to induct expired in June 1973. On April 1, 1975, the President suspended the requirement that those subject to the Military Selective Service Act (MSSA) register with the Selective Service System. Classification ended in FY 1976. Even though inductions under the MSSA have been terminated, the Selective Service System must be ready to provide the untrained manpower that will be required to staff our Armed Forces during a military emergency. The specific requirement--numbers of people and delivery schedule--are established by the Secretary of Defense. To meet this requirement Selective Service must, at a minimum, be able to start inductions within 30 days after mobilization (M+30), induct 100,000 people by no later than M+60 and accomplish 650,000 inductions within 180 days.

The ability of the Selective Service to meet this schedule has been the subject of a number of critical reviews, including a major President's Reorganization Project Study. Each study concluded, as did the then Acting Director of Selective Service in a report to the Congress (March 1979), that, Selective Service does "not presently have the capability to meet the Department of Defense wartime manpower requirements from our 'deep standby' status."

THE REVITALIZED SELECTIVE SERVICE SYSTEM

The President's decision to revitalize the Selective Service System and to initiate registration will substantially improve Selective Service's ability to respond to future emergencies. The President's decision requires that Selective Service substitute an actual registration system for a registration contingency plan and accelerate the process of improving the other components of the Selective Service System.

The new standby Selective Service System has five key components which together constitute the Emergency Military Manpower Procurement System (EMMPS). The components are:

- A registration process that is reliable and efficient.
- An Automated Data Processing (ADP) system that can handle Selective Service's pre- and post-mobilization requirements.
- A system for the promulgation and distribution of orders for induction.
- A claims process that can quickly insure that all registrants' rights to due process are protected.
- A field structure that can support the claims process.

REGISTRATION

How: The United States Postal Service (USPS) has agreed to undertake the task of face-to-face registration. The USPS is ideally suited to undertake this task because it has a single organization structure with facilities and personnel, and a communication/transportation network extending to every corner of the country. There are over 34,000 post offices and the USPS employs over 650,000 people. Postal locations are widely known. USPS has also provided similar services for the Department of State (passport applications) and for the United States Immigration and Naturalization Service (alien registration). In 1979 alone, the USPS processed over 1 million passport applications, and registered over 4 million aliens.

When: The Administration is currently developing plans and will determine in the near future exactly when registration will take place.

Who: The Congress, through the Military Selective Service Act (MSSA) has provided that males between the ages of 18 and 26 have a legal obligation to register with the Selective Service at the time and place and in the manner the President prescribes. There are approximately 16 million men who have this obligation. The President has proposed that women also register; this would raise the total to 32 million people.

When the draft was suspended in 1973, Selective Service was operating under a series of legal and regulatory reforms designed to correct the inequities of the draft during the Vietnam period. Specifically, the 1971 reforms eliminated student and occupational deferments, and instituted a national lottery. Regulatory reforms cancelled the "oldest first" policy and replaced it with the policy of year of vulnerability/youngest first, thus reducing the years of uncertainty which characterized earlier drafts. Selective Service will carry out these reforms, and will register only sufficient year of birth groups to insure that it can meet the needs of our Armed Forces.

Young men (and women when authorized by the Congress) born in 1960 and 1961 will be asked to register with Selective Service at a time the President will prescribe. In January 1981, Selective Service will ask those born in 1962 to register and, at the same time it will also initiate continuous registration of 18 year olds, i.e., young men (and women when authorized by the Congress) will register on, or about the day they turn eighteen.

If it ever becomes necessary to draft anyone, Selective Service will operate under the concept of random selection based upon year and date of birth. The first year-of-birth group from which inductees will be drawn is the one that contains those who reach age 20 in a given calendar year. Registering only those born in 1960 and 1961 will provide a sufficiently large initial pool of people to meet the needs of the Department of Defense. If it were to become necessary to increase the size of the pool, Selective Service would undertake a supplemental registration of those born before 1960, who are subject to the MSSA. The size of the pool will, however, increase over-time as 18 year olds register each year and Selective Service keeps current the records of those previously registered.

Under the above plan, Selective Service will register about 8 million males and females in the near future, and 4 million more by next January. It will register about 4 million people per year thereafter.

ADP SUPPORT

In order to process the initial registration of two year of birth groups, Selective Service will make use of the keypunch capacity of the Social Security Administration (SSA) and/or the Internal Revenue Service (IRS). Both agencies have agreed to support Selective Service. The SSA advises that they could do this job using some portion of the 1,200 terminals at Wilkes Barre, Albuquerque and Salinas. The IRS has over 4,000 data entry terminals located in 10 regional centers, which are conveniently located near USPS centers. During the tax return period of January to June, the IRS has about 6,000 data entry personnel onboard. During the non-tax period of July to December, the staff is reduced to about 1,500 personnel.

The present Selective Service computer is inadequate to do the total job of managing data files, running EMMPs, and supporting area offices and the claims process. Current hardware cannot be expanded to support these tasks. In deciding how best to meet computer needs, Selective Service must make sure that any new ADP system facilitates the entire registration-to-induction process. Responsibility for this process is shared by Selective Service and the DOD's Military Enlisted Processing Command (MEPCOM). Selective Service has the responsibility to:

- Register those subject to the MSSA.
- Determine the order of those who will be called for service.
- Classify individuals.

- Order registrants to take physical and mental examinations.
- Issue orders for induction.
- Adjudicate claims for deferments, postponements, and exemptions.

The Military Enlisted Processing Command, through its 67 Armed Forces Examining and Entrance Stations (AFEES), has the responsibility to:

- Provide physical and mental examinations.
- Induct qualified registrants into the Armed Services.

To provide short-term ADP capability, Selective Service has developed a plan that will ensure (1) an immediate capability to maintain and process registration data and issue orders of induction, if necessary in a national emergency; and (2) within a year, provide for an improved interface with MEPCOM. Selective Service will immediately establish the capability to manage the registrant data file, process change of address notices, and be ready to enter the registration data into the EMMPS in the event of a military mobilization. This will be accomplished by using the facilities of a contractor. The Department of Defense has agreed to provide interim computer support for EMMPS. The compatability of the DOD computer system with EMMPS was tested and demonstrated in December 1979. DOD computer support will be provided by the U.S. Army Management Systems Support Agency (USAMSSA).

The USAMSSA computer and contractor support is only temporary. Selective Service and MEPCOM have agreed to develop a joint computer center by January 1981. A joint center has many advantages. It will reinforce the link between the two organizations, e.g., in the event of mobilization the volume of data transmitted each day would be substantial and a joint facility would minimize delays and the need for an expensive telecommunications network. It would put Selective Service on a computer solely dedicated to the military manpower procurement mission, and would help insure the coordination of manpower flows into the AFEES. The computer center will have sufficient data input capacity to handle Selective Service requirements for continuous registration and data file update (change of address). It will also have the ability to support local boards upon mobilization through 434 area offices which would be established. Computer terminals in each area office will be linked to the central computer and would be used to enter and update claims information.

The joint MEPCOM/SSS Computer Center will adhere to DOD and SSS policy that procedures and safeguards must be developed to insure that access to registrant data files of the SSS is in accordance with existing law.

PROMULGATION OF ORDERS FOR INDUCTION.

In the event of a call for inductions, there will be a single national draft call based upon random selection as provided for in the Emergency Military Manpower Procurement System (EMMPS). Actual induction orders will be issued by the Director of Selective Service, by direction of the President and under authority of Section 5(d) of the MSSA. Using the Selective Service master registration file, induction orders, in Random Sequence Number (RSN) order (based on the lottery), will be transmitted as Western Union Mailgrams. The Mailgrams will contain the following information:

- Identification of the inductee.
- Orders to report at a specific time to a designated AFEES.
- Information on procedures to follow if unable to comply with the induction order.
- Information on exemption and deferment rights.
- A simple claim for exemption or deferment form.
- The address of the inductee's local board/area office to which claims should be sent.

The area office, upon receipt of a claim, will notify Selective Service Headquarters and will process the claim according to standard Selective Service procedures. MEPCOM will also be notified of individuals ordered to AFEES and will report their status to Selective Service Headquarters.

CLAIMS PROCESSING AND THE SELECTIVE SERVICE FIELD STRUCTURE.

Under EMMPS, after receiving an order for induction a registrant may apply for a deferment or exemption. It has historically been, and will continue to be, the task of local draft boards supported by Selective Service Area Offices to adjudicate such claims. It is imperative that a claims structure be in place when orders for induction are issued. Therefore plans and procedures are being developed for the selection and training of local and appeal board members. The FY 1980 Supplemental Budget contains funds for Headquarter's staff to initiate the process. The actual selection and training of members is funded in the FY 1981 Budget.

Selective Service also has streamlined its procedures to reconstitute essential area offices in support of local boards. The Secretary of Defense and the Director of Selective Service have agreed that, "in order to facilitate the operation of the Selective Service in support of the manpower procurement needs of the Department of Defense, we must better coordinate our planning and post-mobilization manpower system. In addition, it is appropriate that DOD, like other Federal agencies, provide support to the Selective Service during a national emergency. Such support from DOD might include but not be limited to computer and data processing, selected personnel, and facilities. However, DOD should not in any way be involved in the process by which the Selective Service adjudicates claims for deferment or exemption."

Selective Service has a cadre of 715 military reservists to reactivate the administrative field structure upon mobilization. Selective Service has entered into an agreement with DOD to use specific Armed Forces Recruiting Office facilities within 24 hours after mobilization. Recruiting Service personnel will augment the Selective Service reservists for about 45 days after mobilization. These personnel will be identified by name, provided training and will participate in training exercises and field tests.

Also, Selective Service has restructured its reserve officer summer training to test its ability to mobilize State Headquarters and reestablish area offices. Selective Service reserve officers will visit the Armed Forces Recruiting Offices scheduled to support Selective Service during a mobilization. Equipment and personnel in these offices will be inventoried and local contacts with GSA, OPM, and the telephone company will be made. In addition, Selective Service will fully participate in the Department of Defense mobilization exercise planned for this fall.

CALENDAR OF EVENTS IN THE EVENT OF A MILITARY MOBILIZATION.

The mission of the Selective Service is to be ready, without notice, to provide the untrained personnel that will be required to staff our Armed Forces during a military emergency.

The President's action to reinstate registration does not change this mission. As previously noted, all that has happened is that the Selective Service will be substituting an operating registration system for a registration contingency plan. In the event of a national emergency and the reinstitution of the draft, the Selective Service, operating under EMMPS, will initiate the following process:

Time	Events
Pre-Mobilization	Individuals subject to the MSSA and in specific age groups register with Selective Service at local post offices.
M	The President declares a national emergency and asks Congress for the authority to induct.
M+1	Congress authorizes the President to induct personnel into the Armed Forces.
	The Selective Service conducts a lottery and establishes the "order-of-call" based on Random Sequence Number (RSN).
	The Director of Selective Service pursuant to regulations issued by the President under Section 5(d) of the Military Selective Service Act (MSSA) issues orders for induction in the proper RSN "order-of-call".
	Selective Service area offices open under an established agreement with the Department of Defense to make available selected recruiting command facilities and personnel.

Time	Events
M+2 to M+12	Registrants receive orders for induction and can: --report to an AFEES for processing, receive a physical and mental examination, and if found fit, be inducted. or --request an exemption or deferment. A registrant may request reclassification by filing a claim with an area office of the Selective Service.
M+13	First inductees report to their assigned military training bases.
M+28	The system, working at maximum capacity, processes the 100,00th inductee. (Analysis shows that the AFEES could perform at least 14,000 physical and mental examinations based on two shifts each day. The AFEES plan to operate six days per week, in the event of mobilization. Based upon an historical 50 percent physical and mental examination acceptance rate, the system could induct 7,000 per day, six days per week.)

STANDBY SELECTIVE SERVICE SYSTEM

The 1980 Defense Authorization Act required the President to consider:

- Non-participatory (computer-match) registration.
- Pre-mobilization registration.
- Pre-mobilization registration with classification.
- Pre-mobilization registration with classification and examination.

The previous discussion contained a detailed description of plans to revitalize the standby Selective Service System by initiating pre-mobilization registration and upgrading other components of the system. The following describes the other options:

Non-Participatory Registration. The Congressional Budget Office (CBO) and the General Accounting Office (GAO) proposed that Selective Service consider relying on existing computer files to create a list of draft eligibles instead of planning on a traditional face-to-face registration. This proposal was evaluated in terms of (1) Selective Service's ability to construct a list of sufficient size and accuracy from which to induct the required personnel, and (2) the impact of such procedures on the Privacy Act, on other related statutes, on the MSSA, and on Constitutional questions of equal protection and due process.

The Selective Service, in order to carry out the draft, needs the name, address, and birth date of males subject to the MSSA. (If females are subject to the MSSA, it would also need to know the sex of the registrant.) At a minimum, it needs valid data (e.g. correct addresses) on sufficient numbers of people to insure that it can induct the required number of people; a 5:1 order to induct/induction ratio is anticipated and used for planning. A master list must be available no later than M+20 to insure that Selective Service can deliver the first inductees to Defense by M+30.

The most comprehensive data base available is the master Social Security Administration (SSA) file which contains all the needed data except current address. Based upon Selective Service's survey of five Federal agencies (Agriculture, HEW, Justice, Commerce, and Treasury); and the Education, Motor Vehicle and Voter Registration agencies in six states, it found the most comprehensive source of "current" addresses is the Internal Revenue Service (IRS).

The Congressional Budget Office, using Department of Labor employment statistics, has estimated that 85 percent of the 19-to-20 year old population work some time during each year, and therefore file an Income Tax Return. The Bureau of the Census reports that the mobility rate of the prime age group (18-26) ranged from 16 to 34 percent during the period 1975 to 1976. Selective Service's best estimate is that, unless a master list is updated regularly, approximately 25 percent of the addresses will be invalid by the end of the year. A merged SSA/IRS list will be most accurate immediately after April 15, and will become progressively inaccurate until the following year's filing. Given Selective Service estimates of an 85 percent IRS coverage and a 25 percent mobility rate, a master list with "valid" addresses may capture as little as 60 percent of the draft eligible population.

As noted, any registration system must be able to provide a list in about twenty days. CBO indicates that these agencies "already have a major tape exchange program in effect, and they estimate it would take about three to five days to merge the files . . ." However, in response to inquiries from Selective Service, Social Security indicated it would take a month to deliver the data, and IRS indicated two months to perform the match and create the merge file. It appears that in order to insure a master file, SSA and IRS data would have to be merged in the pre-mobilization period.

While the construction of a master list from SSA and IRS computer files is feasible, questions have been raised on privacy and constitutional guarantees of equal protection and due process. All Federal agencies surveyed advised that not only would the Privacy Act of 1974 have to be amended, but prohibitions on individual agencies would also have to be changed. (IRS has specific prohibitions in Title 26.) Moreover, IRS believes that, "to use the Internal Revenue Service system for the purpose suggested would adversely affect our extremely important mission in a number of ways. It may have a significant impact on compliance in the area of withholdings and return filings . . . if withholding records are used in the military induction process, draft protestors would be presented with an irresistible temptation to become tax protestors."

Non-participatory registration would require an amendment to the MSSA, and such an amendment would raises questions of due process and equal protection guarantees of the Constitution.

Under present mobilization plans, not everyone eligible to serve is likely to be called. A system in which induction into military service would be confined to those who have social security numbers, have filed an Income Tax Return, and have not moved, does not appear to be an equitable means for determining eligibility for military service. This is particularly true since there are other ways open to the Congress--face-to-face registration--which guarantee due process under the law.

It is often argued that face-to-face registration will not provide more names and addresses than non-participatory registration, and, therefore, the two systems are equivalent. This does not appear to be correct. Selective Service estimates that a face-to-face registration will provide a list over 98 percent complete compared to as little as 60 percent by means of computer merger. More importantly, as long as everyone is given a fair opportunity to register, 100 percent of the population eligible for military service under the MSSA will be legally accounted for, i.e., those who do not register may be in violation of the law.

Non-participatory registration also may violate standards of equal protection because two people who are identical, except that one recently moved, would be treated differently in terms of the probability they would have to serve. The administration of such a scheme would thus produce disparity of treatment of persons similar in all legally recognized ways.

Pre-Mobilization Registration with Classification. If pre-mobilization classification as well as registration was in effect, the Selective Service would modify its Emergency Military Manpower Procurement System (EMMPS) procedures. SSS would establish 434 area offices to support the classification workload of local draft boards. At the same time, 97 appeal boards would be established. Registrants would be given continuous opportunity to appeal or petition for change of classification.

Pre-mobilization classification of registrants would not improve mobilization response times. First inductions would still occur at M+12. One hundred thousand inductions would be made by M+28 and 650,000 by M+119. The benefit of classification before mobilization would not be in response time, but in a more orderly induction process, since orders would be issued only to those already classified. However, individuals who did not request reclassification in the pre-mobilization period might still do so during mobilization.

The additional costs incurred by reinstating pre-mobilization classification would be determined in part by the numbers classified.*

Two sub-options were considered: (1) classify only enough registrants to insure the delivery of 100,000 qualified inductees, and (2) classify an entire year of birth group annually.

In order to provide 100,000 qualified inductees, Selective Service would classify approximately 500,000 registrants. Additional staff would be needed to handle classification questionaires, make and maintain registrant files, request additional documentation when required, decide administrative reclassifications, support local boards, update data bases, notify registrants of results, arrange for personal appearances, and respond to queries.

If an entire year group (about 4 million men and women) is classified each year, added costs would approximately double, but with no increase in responsiveness.

Pre-Mobilization Classification and Examination. Under this concept, registrants with specified classifications would be ordered to an AFEES for pre-induction examination. Those found acceptable would be available for induction after a check of physical status. Army regulations provide that physical examinations are valid for one year. If an individual is inducted within a year after his examination, only a physical inspection is required. A delay of more than a year would call for a new examination.

Responsiveness would be improved because MEPCOM would be able to process pre-examined individuals more quickly. Current estimates are that MEPCOM could accept up to 17,500 pre-examined individuals per day and that about 16,000 of these (92 percent) would be found acceptable and inducted versus current processing estimates of 7,000 pre-registered but unexamined inductees.

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*The costs presented here are programmatic estimates and have not been developed in sufficient detail to serve as budget estimates. The costs would be in addition to those required to reinstate registration.

As with pre-mobilization classification, two sub-options are: (1) examine sufficient numbers of classified registrants to insure 100,000 qualified inductees and (2) examine an entire year of birth group annually. In either case, induction orders would be issued on M+1, and inductions would begin at M+12, initially at a rate of 16,000 per day. If a portion of a year group is examined, 100,000 qualified males could be inducted by M+16 and 650,000 individuals could be inducted by M+108. If the entire year group is examined in the pre-mobilization period, then the total 650,000 inductions could be made by M+56. Thus, both sub-options exceed DOD's stated requirements for inductees.

If a decision is made to examine only enough people to meet DOD's 60-day requirement, Selective Service would plan to order over 400,000 registrants for examination. Additional Selective Service resources would be added to process examination results, schedule transportation for the registrants to take examinations, answer queries, and schedule the additional workloads for local boards. One-time costs would increase in either case since additional area offices would need to be operational. The additional Selective Service recurring costs would total $10 million if part of a year group is examined and $50 million if an entire year group is examined annually.

The costs of the examination would be borne by the Department of the Army. The Office of the Army Deputy Chief of Staff for Personnel provided an estimate of $75.00 per examination based on the expected use of contract physicians. Re-examinations would cost about $10.00. Using these projected costs, examining part of a year group would cost about $30 million and examining an entire year group would cost over $200 million.

CONCLUSIONS AND RECOMMENDATIONS

Analysis of non-participatory registration suggests that while as a procedure it is technically feasible, it is not likely to be perceived as fair or equitable and would be subject to serious Constitutional challenge. For these reasons, the non-participatory registration concept has not been adopted.

With the President's decision to create a registrant data base and revitalize the SSS, classification or examination are not necessary at this time. The reduced delivery time provided by the other options is unnecessary at this this time and does not warrant the significant additional costs. This decision is always subject to review in light of the changing needs of the Armed Forces and the international situation.

PART II

INDUCTION AUTHORITY ISSUES

INTRODUCTION

This set of issues concerns the authority of the President to register, classify, examine and induct persons into the active Armed Forces and the Individual Ready Reserve. Specifically, the Congress has asked for a response on:

- The desirability of the enactment of authority for the President to induct persons registered under the Military Selective Service Act for training and service in the Armed Forces during any period with respect to which the President determines that such authority is required in the interest of the national defense.
- Whether women should be subject to registration under the Military Selective Service Act and to induction for training and service in the Armed Forces under such Act.
- The desirability and feasibility of providing authority for the President to induct persons into the Individual Ready Reserve.

These issues are reviewed and conclusions and recommendations are presented in the following sections.

STANDBY PRESIDENTIAL INDUCTION AUTHORITY

Background

The draft was instituted during the Civil War and World War I by Acts of Congress, and Congress authorized use of the draft by the President beginning one year prior to U.S. involvement in World War II. This authority continued through World War II. After World War II, Congress allowed the draft law to expire for a brief period, but reinstated conscription during the Berlin airlift of 1948. For the following 25 years, the Congress delegated to the President the authority to determine when to initiate inductions. The 1948 law provided an induction authority for a two-year period. The authority was extended for one year in 1950. Beginning in 1951, the induction authority was extended by Congress to the President for successive four-year periods. However, in 1971, the Congress, at the request of the Administration, extended the President's induction authority for only two years. The purpose of the Administration's request for only a two-year extension in 1971 was to allow time to phase into an All-Volunteer force.

The last call for inductees was issued by the Selective Service System in December 1972. On January 27, 1973, the Secretary of Defense announced the implementation of a "zero draft". The Nixon Administration did not request an extension of the President's induction authority in 1973. Congress allowed the authority to expire on July 1, 1973.

Other provisions of the Military Selective Service Act, including Presidential authority to register and classify young men, remained in effect.

Discussion and Conclusion

The following alternatives were reviewed:

- Provide authority for the President to induct persons if the President determines that such induction is required in the interest of national defense.
- Provide Presidential authority to begin induction upon Presidential declaration of a national emergency or Congressional declaration of national emergency or war.
- Continue with the current arrangement; i.e., where Congress must enact the authority to induct.

The Military Selective Service Act presently authorizes the President to reinstate registration and classification but prohibits inductions without Congressional approval. The Administration supports the requirement for Congressional approval. In a nation where individual freedom is cherished, the decision to institute conscription is a serious matter and should be a shared responsibility of the Congress and the President. The Administration would request the authority to conscript if this step were deemed necessary by the President.

However, sufficient time should exist after mobilization is announced for Congress to authorize induction by amending the current Military Selective Service Act (50 U.S.C. App. 451, et seq). The Administration does not seek additional statutory authority to induct.

REGISTRATION AND INDUCTION OF WOMEN

Background

Current Statutory Authority. The statutory authority for the draft expired in June 1973, ending a nearly continuous period of over 30 years of compulsory service for men. The current Military Selective Service Act provides standby authority to the President for the reinstitution of registration and classification for service in the Armed Services for young men between the ages of 18 and 26. There is no provision for the registration and classification of women. The President does not have authority to reinstate inductions for men or to induct women.

Women in the Service. The influx of women into the military during this decade has provided substantial evidence that women are capable of high quality performance in many military skills. The number of women in the military service has increased from 39,000 in 1969 to over 150,000 in 1979. They represent about 8 percent of the force and are projected to represent approximately 12 percent by 1985.

Current Laws and Policy. The Secretary of Defense and the Secretaries of the Military Departments set policy for the assignment of women within statutory restrictions imposed by Congress. The Department of Defense has asked that the statutory restrictions be removed. Repeal is needed to provide the Service Secretaries with greater flexibility in determining assignments. Current assignment policies are described below:

Army. Within the Army, there are no statutory restictions on the assignment of women. The Secretary of the Army determines where women may serve and, in conjunction with the Chief of Staff, develops policies and programs to employ Army women effectively. Current Army policy excludes women, both officer and enlisted, from those specialties and units which relate to close combat (infantry, armor, cannon field artillery, combat engineer and low altitude air defense units of battalion/squadron or smaller size). Women are assigned to combat support and combat service support units in divisions, including maintenance battalions, signal battalions, brigade level headquarters and certain artillery units.

Navy. For the Navy, Title 10 U.S.C. 6015, as amended, prohibits the assignment of women to permanent duty on vessels and aircraft that are engaged in combat missions. Female officers may be assigned to positions within all unrestricted line career fields, except submarine warfare and special warfare. These two specialties remain closed to women because of their close relationship to combat. Enlisted women in the Navy have access to 86 of the 100 ratings. The fourteen ratings excluded contain skills found primarily on combatant ships.

Air Force. Female officers in the Air Force may serve in all officer career fields but are excluded from some specific positions due to the provision in 10 U.S.C. 8549 that restricts women from being assigned to air crew positions on combat aircraft engaged in combat missions (primarily fighters, bombers, reconnaissance and tactical aircraft). Only four of 230 Air Force enlisted occupations are closed to women. These exclusions are due to either the legislative restrictions in Title 10 U.S.C. 8549 or Air Force policy.

Marine Corps. By policy the Marine Corps, like the Army, does not assign women to units whose primary mission is one of combat nor does it assign women to those military occupations which are primarily associated with combat units. Marines in the Fleet Marine Force must be frequently rotated from land duty to sea duty aboard combat vessels. Women are precluded by law from serving aboard these vessels. Sufficient billets must be set aside ashore for men assigned to these positions to provide for an equitable rotation policy. Therefore, no occupational field is allowed to have more women assigned than can support the established rotational policy of overseas tours for men. Moreover, no unit of the Fleet Marine Force is allowed to contain more than 10 percent women.

Discussion

The following alternatives were considered:

- Women should be exempt from Selective Service registration and induction into the Armed Forces.
- Women should be subject to registration and induction. However, the rate of induction of women should be based on the needs of the Armed Forces.
- Women should be subject to registration and induction for training and service in the Armed Forces in equal numbers with men.

Three arguments have been advanced for changing the law to allow women to be drafted:

- Women can perform well in skills and jobs needed by the military.
- The Armed Forces may need a female draft to meet total wartime personnel requirements.
- It is inequitable to limit the burden of compulsory service to males.

Job Performance by Women. Today over 8 percent of military personnel are women. Women have won promotions to the grade of Brigadier General, Rear Admiral, Major General, and numerous other leadership positions. Women are today performing well a wide variety of jobs in each of the services. A large number of military jobs are ones which women are also performing daily in civilian life.

The Military Requirements for Drafting Women. If the Military Selective Service Act is amended to provide for the registration and classification of both men and women, the pool of people available to be drafted would be doubled.

It is doubtful that a female draft can be justified on the argument that wartime personnel requirements cannot be met without them. The pool of draft eligible men (ages 18 to 26) is sufficiently large to meet projected wartime requirements. Furthermore, men, unlike women, can be assigned to any military position, including close combat jobs.

However, women can be used in large numbers in the peacetime and wartime force. Their presence could free more men for close combat jobs. The maximum number of women that can be used is subject to three constraints: (1) legislative prohibitions against the use of women in certain military positions, (2) the policy to reserve certain assignments, such as close combat roles, for men only and (3) the need to reserve a substantial number of noncombat positions for men in order to provide a pool of ready replacements for close combat positions.

A change in the Selective Service Act to permit the registration and induction of women would not necessarily mean that significant numbers of women would be drafted. If women were subject to the draft, the Department of Defense would determine the maximum number of women that could be used in the military forces subject to the three constraints discussed above, and to the needs of the Armed Forces to provide close combat fillers and replacements quickly. If there were not enough women volunteers to bring total female stength up to that number, a draft call for women would be issued.

The Issue of Equity. The argument has been advanced that it would be inequitable to impose registration and induction only on males. This is a persuasive argument. Since women have proven that they can serve successfully in the Armed Forces in peace they should be asked also to serve in the Armed Forces during a national emergency or war to the extent that they can make a contribution. It is possible, however, that women would not be conscripted--even for those positions to which they are assigned under present policy--if volunteering provides as many women as could be used.

The equity argument does not require that men and women be inducted in equal numbers. The numbers for each would have to reflect the jobs available for each to fill.

Equity is achieved when both men and women are asked to serve in proportion to the ability of the Armed Forces to use them effectively.

Conclusion

In order to expand the potential personnel pool available during a national emergency, women as well as men should be subject by law to registration, induction and training for service in the Armed Forces. Women should constitute a part of the personnel inventory from which the Services could draw to meet requirements as needed. The utilization of women would be determined in accordance with the needs and mission of each Service.

Recommendations

The Military Selective Service Act (50 U.S.C. App. 451, et seq) should be amended to provide Presidential authority to register, classify and examine women for service in the Armed Forces. At such time as Congress authorizes the conscription of men, authority should also be extended to provide for the conscription of women.

INDUCTION INTO THE INDIVIDUAL READY RESERVE (IRR)

Background

In assessing its need for mobilization manpower, the Department of Defense has determined that the most demanding situation would be an outbreak of intense conflict between the Warsaw Pact and NATO nations preceded by very little warning time. Under this condition, there would be an abrupt rise in personnel needed to bring units up to wartime strength and to replace casualties.

To meet this "worst-case" wartime requirement, the Department of Defense must rely not only on the active forces and the Selected Reserve but also on personnel trained before mobilization is declared. This pretrained personnel pool must be sized to meet military manpower requirements until a wartime draft can be activated and inductees trained. If a period of rising tensions precedes an outbreak of war, and if during that period a decision to resume induction and increase the size of the active force is made, a smaller pretrained manpower pool would be needed. Planning for this less demanding circumstance is subsumed under planning for the "worst case."

The Individual Ready Reserve (IRR) is the primary but not the sole pool of pretrained individuals. The IRR comprises the portion of the Ready Reserve strength consisting of trained personnel not organized into units. Its purpose is to provide in an emergency, trained individuals to bring active and Selected Reserve units from their peacetime to their wartime strength and to provide replacements for combat casualties in the first few months of mobilization.

Individuals who have completed their tour of duty with the active or Reserve Component forces but still have time remaining on their six-year military service obligation are transferred to the IRR and are subject to call in an emergency. The IRR also contains volunteers, both officers and enlisted personnel, who have extended beyond their statutory obligation. However, its size is primarily a function of the number of people leaving active and selected reserve service and the period of time remaining in their obligation.

The IRR can be ordered to active duty upon a declaration of national emergency by the President or the Congress or upon a declaration of war by the Congress. It has declined in strength from its average 890,000 in the 1960's and its peak of 1,600,000 in 1971 to a low of 354,000 in early 1978. The decline was due primarily to a contraction in the size of the active force, and therefore in the number of obligated individuals leaving active duty. Secondarily, it reflects longer average enlistments in the volunteer era. In 1978 and the first three quarters of 1979, the IRR grew by 12 percent to a September 30, 1979 level of 396,000. The programs that have caused that increase and promise further strength increases will be addressed later.

The IRR has been regarded by some as the only source for supplementing active and reserve units with pretrained individuals. Clearly this is not so. There are other important sources of pretrained individuals, including the Standby Reserve and retired military personnel.

At current levels, the IRR and other sources of personnel are inadequate to meet the Army's "worst case" needs for pretrained personnel. If such a situation were to develop, a shortage of 200,000 to 300,000 trained personnel for the Army would likely develop in the first few months.

Peacetime induction directly into the IRR has been suggested as a means of overcoming this shortfall. Such a step would require new legislation and increased appropriations for pay and allowances for trainees, training base operations, and the costs of processing people through the draft mechanism.

Discussion

The following alternatives were considered:

- o Provide the authority for the President in peacetime to induct persons into the active forces for training and then transfer them to the IRR after completion of training.
- o Do not induct persons into the IRR but rebuild the IRR with voluntary programs.

These alternatives represent dramatically different choices. The sections that follow present arguments for and against an IRR draft as well as describing and evaluating the volunteer alternative to the draft.

The IRR Draft

There are two major advantages to an IRR draft:

- o It would eliminate the present Army shortfall in pretrained manpower in about two and a half years after implementation.*
- o To the extent that some of the IRR draftees would want to join an active or reserve unit after training, an IRR draft would help active force and Selected Reserve recruiting.

The major disadvantages lie in the social and dollar costs of an IRR draft and the relatively marginal value of IRR draftees as compared with other trained soldiers.

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* Assuming 100,000 draftees per year with 20,000 choosing the active force or Selected Reserve in lieu of remaining in the IRR after training. (The Army training base can only accommodate about 80,000 people annually in addition to those programmed.) After two years, the number drafted would likely be less. The exact number would depend on the extent to which draftees opted to volunteer for the active force or the Selected Reserve after training.

- A recent Defense Department study estimated the cost of an IRR draft to be in excess of $500 million annually.[1]

- IRR draftees would, by definition, suffer from lack of unit experience. Their skills would severely erode over their five and one-half year military obligation following training. (Present IRR members typically are in this category for only one or two years after having served in units.) Their short term of active service (probably six months) would be expected to influence adversely their acquisition of skills, their retention of skills over the next five and one-half years and their yield rates if mobilized. Some of these adverse effects could be reduced if the draft process included a requirement for additional training two or three times during the five and one-half year period of obligation. This would, however, increase the cost, hardship, and opposition to such a draft.

The Volunteer Alternative

The main alternative to the IRR draft is to enhance the volunteer program for both the IRR and the Selected Reserve. Enlistment and reenlistment in either of these components of the Ready Reserve will help resolve the Army's mobilization manpower shortfall because fewer IRR personnel would be needed at time of war to bring the Selected Reserve up to wartime strength. Thus, a better manned Selected Reserve reduces the need for IRR personnel.

The following sections of this paper present:

- The FY 1981 programs to increase IRR strength and to manage that pool better.

- The major elements of the FY 1981 programs to improve Selected Reserve strength.

- The measures being taken to make better use of members of the standby reserve and retired personnel.

Increases in IRR Strength

The Department of Defense is currently enhancing its volunteer program to increase the size of the IRR and to manage it better. These initiatives are described below:

- All individuals leaving the Army from active duty and the Selected Reserve prior to the end of their enlistment are being screened to insure that only those with no mobilization potential are discharged. The remainder are transferred to the IRR. By this technique, the Army estimates about 80,000 people can be added to the IRR by 1985.
- Each of the Services has an IRR reenlistment program underway to encourage members reaching the end of their six-year service obligation to reenlist in the IRR. The need for a reenlistment bonus for the Army is apparent. Consequently, legislation has been prepared and will be submitted to authorize the payment of a reenlistment bonus for the IRR. The FY 1981 budget request includes funds for this program. It is estimated that, the program would increase the Army IRR by about 30,000.
- Women enlistees now receive the same six-year military service obligation as their male counterparts. This legislative change will begin to show results in 1981.
- DOD no longer allows enlistees to count the time spent after enlistment, but before they entered service for initial training, toward fulfillment of the six-year military service obligation. This will increase the Army IRR by 14,000.
- The legal provision that exempted enlistees 26 years of age or over from incurring the six-year military service obligation was eliminated in 1979. Currently, all enlistees incur a six-year obligation. The Army will experience a 10,000 person increase in the IRR by 1985 as a result of this change.
- The active forces' test of two-year active duty enlistments and the Selected Reserve's use of three and four year enlistments will also increase the strength of the IRR.

  The shorter periods of time spent in the active forces or the Selected Reserve means a longer period in the IRR in order to fulfill the six-year obligation. The test for the Army for one year is expected to add about 1,000 members to the IRR, but for FY 1981 only.

- In 1979, the Army tested an IRR direct enlistment program in which non-prior service persons were allowed to enlist directly into the IRR and, after successfully completing training, were given the option of transferring to the active Army, the Selected Reserve or remaining in the IRR. About 30 percent went into the active Army and 15 percent into the Selected Reserve. Based on these initial results, the IRR direct enlistment option is being expanded to most of the country and provisions for voluntary refresher training are being developed. This program is expected to provide additional accessions into the IRR and to serve also as another source of accessions for the active force and the Selected Reserve.
- As Army members leave the active forces and are transferred to the IRR, they are being matched with mobilization assignments and given orders telling them where to report upon mobilization. This will greatly speed the reporting of IRR members when they are needed.

These programs are designed to make the IRR pool more responsive to a mobilization call and to increase it in size for DOD as a whole from 396,000 at end-FY 1979 to 540,000 by end-FY 1981 and 680,000 by end-FY 1985. The projected increases in Army IRR strength for the programs discussed are shown in the following table.

Projected Army IRR Strength Increases from FY 1979
(000's)

Program	End FY 1981	End FY 1985
Screen Discharges	30	80
IRR Reenlistment Bonus	15	30
MSO for Women	3	25
Elimination of Time in DEP	-	14
Age 26 MSO Policy	-	10
TOTAL	48	159

The expected increase of 159,000 Army IRR members will not be sufficient to eliminate the shortfall mentioned earlier. Consequently, increases in the strength of the Selected Reserve will be needed also to insure that wartime manpower requirements can be met.

Selected Reserve Strength Increases

The programs to increase Selected Reserve strength are in four major areas:

- Varied enlistment options are now being offered in the Selected Reserve. New accessions may enlist for four or five years in the Selected Reserve with the balance of the six year obligation in the IRR. These options are in addition to the standard six-year enlistment

- More flexibility to individuals in scheduling their initial periods of training. In the past, all new accessions were required to serve a minimum of 12 consecutive weeks during which they received basic military training and their specialty training. Split-training is now offered which permits enlistees to take basic military training and specialty training in two separate sessions; e.g., two consecutive summers.

- Enlistment and reenlistment bonuses as well as educational benefits are now being offered. These incentive programs are designed to attract and retain people in Selected Reserve units scheduled to deploy in time of war. These programs have been in effect since December 1978.

- A full-time Army Reserve recruiting force under the control of the Army's Recruiting Command is now in operation. It features a centralized referral system, an automated system for accession management and recognition of outstanding performance by individual recruiters. This mangement program reversed the decline in Army Reserve strength.

Besides further growth from these programs in the years ahead, we are now planning substantial efforts to reduce reserve attrition. Lower attrition will lead to increased strength, even without more enlistments.

ogether the increases in IRR and Selected Reserve strength re expected to eliminate the Army's shortfall of pretrained anpower by the mid 1980's.

Other Management Actions

In addition to the programs for increasing the strength and better managing the IRR and Selected Reserve, we are improving the responsiveness and utility of the retiree and Standby Reserve pools of trained individuals:

- Members of the Standby Reserve are being screened to determine their mobilization potential and those with valuable skills are being asked to transfer to the IRR. The frequency of contact with the members is being increased in order to validate home address, physical status and other important data.
- All the Services have programs underway to identify positions that can be filled upon mobilization by retired personnel. Efforts are also underway to identify retirees and pre-assign them to specific mobilization positions. Retired personnel represent a valuable and experienced resource and could replace active duty personnel in the training and support establishments upon mobilization.

Conclusion

- The programs underway for increased manning in the IRR and Selected Reserve should eliminate the shortfall by 1985.
- A draft would not solve the IRR program much sooner than the improvements contained in the current program. Current Army training base expansion capabilities would limit the amount of accessions to about 80,000 people annually. Therefore, it would take an IRR draft at least two and one-half years to fill the shortfall.

PART III

OTHER PROCEDURES TO IMPROVE THE ARMED FORCES

INTRODUCTION

The Congress asked the President to identify procedures that could be established to enable the Armed Forces to meet their personnel requirements. The following sections review our progress in meeting personnel objectives and cite improvements that the Administration has underway and under consideration.

BACKGROUND

The main personnel requirement of the Department of Defense is to provide enough qualified people to maintain military preparedness. Military preparedness depends on three groups of people in differing states of readiness: the Active Forces provide trained and equipped personnel organized into units and able to deploy immediately; the Reserve Components, which are organized in units and in pools of obligated and trained personnel, provide the first stage in the expansion of effective forces; the civilian population represents unobligated and typically untrained manpower resources available for the second stage of expansion of forces in the event of a severe threat to the nation's security.

In peacetime, the Active Forces and Reserve Components depend entirely on volunteers. Their level of manning is a consequence of recruiting success, attrition experience and reenlistment rates.

ACTIVE FORCE

Overview

A decade ago the President's Commission on an All-Volunteer Force set as the main objective of the AVF to meet active force military manpower end strength requirements without conscription. By that objective, the AVF has been very successful. As shown on the following table, since FY 1974 the active forces have remained within 1.5 percent of the Congressionally authorized strength levels. Insofar as strength levels have declined, it is by choice, not because of recruiting problems.

ALL-VOLUNTEER FORCE DATA: ACTIVE FORCES

	Fiscal Year 1973	1974	1975	1977	1978	1979	1st Qtr. 1979	1980
End Strength (000)								
Planned	2,288	2,174	2,129	2,088	2,069	2,050	2,038	2,016
Actual	2,252	2,161	2,127	2,074	2,061	2,024	2,040	2,019
% Achieved	98.4	99.5	99.9	99.3	99.6	98.7	100.1	100.1
Accessions								
Total (000)	485	423	458	411	332	338	65	84
% of Objective	96	97	102	98	98	93	90	96
NPS Accessions	455 a/	395	419	388	312	316	60	78
High School Graduates (000)	301	233	277	269	240	229	43	45
% of NPS Accessions	66	61	66	69	77	73	71	58
Reenlistment Rates (%)								
First Term	24	30	37	35	37	37	38	40
Career	83	81	82	75	72	68	71	71
Total	47	52	57	54	55	53	55	56
First Term Attrition (%) b/	32	37	38	35c/	30c/	28c/	—	

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a/ Includes 206,000 inductees for 1970 and 36,000 for 1973.

b/ Percent of those who enlisted for three or more years in fiscal year shown who left will leave before completing three years of service.

c/ Projections based on data through FY 1979.

Recruitment

The above table also shows that FY 1979 was the most difficult recruiting year under the AVF. The Services achieved only 93 percent of their collective recruiting objective. For the first time under the AVF, all four Services were short of objectives. Still, 338,000 young men and women enlisted in the Armed Forces in 1979. That was 6,000 more than the previous year. (The Services achieved 98 percent of their goal in 1978 because the objective was lower than in 1979.) In FY 1979, over 73 percent of new accessions had high school diplomas--a percentage that is higher than any year in history except for 1978. However, the Department of Defense remains concerned about its ability and educational attainment. The Army especially is of concern, since it falls below the DOD average with respect to both of these rough measures of recruit quality.

Although the recruiting results for the first quarter of FY 1980 fell short of the overall DOD objective, they show a significant improvement over the same period during FY 1979. During this period the Services recruited 96 percent of their objectives as compared to 90 percent for the first quarter of FY 1979. This is encouraging because the objective for the first quarter of FY 1980 (88,200) was 16,300 higher than for the first quarter of FY 1979 (71,900) because of the need to make up recruiting shortfalls carried forward from FY 1979.

The demographic projections for the coming decade raise concerns. During this period the pool of eligible 18 year old men and women will decline by about 20 percent from the 1979 level of 4.2 million. No one can predict with confidence how much these downward trends will affect recruitment for the All-Volunteer Force.

Attrition

First-term attrition increased dramatically with the advent of volunteerism. The All-Volunteer Force Commission had projected a drop in attrition as conscripts passed from the system. Instead, the Service policies were liberalized. Discharge of poor performers was more common than it had been under the draft. To some extent, this was a healthy change, but the losses are expensive in terms of recruiting and training costs. Actions initiated in 1977 have begun to cut such losses, as shown on the table above.

Reenlistment

First-term reenlistment rates have remained near 37 percent since 1975. The current rate is over 2.5 times the FY 1970 rate. This larger than predicted retention of trained personnel has significantly reduced the requirement for new accessions and is a major success of the AVF, contributing to increased readiness.

On the other hand, reenlistment rates at the second and later reenlistment points have dropped steadily from the high of 83 percent in 1973 to 68 percent in FY 1978, well below the 1970 rate. To some extent, this is attributable to the higher first-term reenlistment rate. Many of those who reen- listed to receive the Selective Reenlistment Bonus and other incentives are faced with perceived pay cuts when considering reenlistment decisions without bonuses beyond ten years of service. While overall retention is encouraging, career reenlistment is of concern, especially in the Navy.

SELECTED RESERVE

The Selected Reserve also provides an important part of the All-Volunteer Force. The following table shows recent Selected Reserve trends.

ALL-VOLUNTEER FORCE DATA: SELECTED RESERVE

	Fiscal Years					
	1973	1974	1975	1977	1978	1979
Average Strength (000)a/						
Planned	917	904	914	835	809	798
Actual	927	912	905	813	796	808
Accessions						
Total (000)	189	226	219	225	201	205
As % of Objective	-	-	-	98	85	94
NPS Accessions (000)	70	46	69	73	70	78
Male High School Graduates	-	19	27	25	22	26
Continuation Rates (%) b/						
First Term	-	-	76	65	66	73
Career	-	-	81	81	81	81
Total	-	-	77	72	74	78

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a/ Congress authorizes the average strength of the Selected Reserve, in contrast to the end-year.

b/ % of numbers continuing from one year to the next.

In FY 1978 the Reserve Components experienced a low point in manning. This continued a decline from FY 1974. The decline was reversed in FY 1979. The average strength of the Selected Reserve is expected to continue to increase from 808,000 in FY 1979 to 850,000 in FY 1981. These increases are expected to result from a stable recruiting force, incentives, and increased retention accomplished through better training. All other indicators in the table showed an increase in FY 1979.

HELPING THE MILITARY MEET ITS PERSONNEL REQUIREMENTS

The AVF is not without problems, but it is working, in many respects better than anticipated ten years ago. The problems are important, however. The key problems in military recruiting seem to result from a decline in the value of the enlistment package, an unfavorable image of the military, and an improved economy. The Armed Forces entered the All-Volunteer Force with a competitive "enlistment package" that was successful. That package consisted of:

- substantial increases in pay;
- career pay competitive with the private sector;
- a strong educational incentive in the "GI Bill;" and
- highly valued in-service benefits for the serviceperson and his/her family.

Over the past six years, the attractiveness of that package, particularly to high potential high school graduates, has diminished. The basic pay for grade E-2 has declined relative to pay in the private sector. Increases in career military pay, along with increases in Federal civilian pay, have lagged behind increases in pay in the private sector. Further, the significant increases in the cost of living have eroded the real income of all Americans. In addition, the contributory Veterans Education Assistance Program (VEAP) is not as attractive as the former GI Bill, and some in-service benefits have been reduced.

There are improvements that would help the military meet its personnel requirements:

- Make military service more attractive to the potential enlistee and to those in service by improving pay and benefits.
- Reduce the need to recruit young men by recruiting more women and by reducing the attrition of both men and women already in service.
- Improve the capability to add trained people to the force after mobilization by training draftees faster and by increasing the size of the pool of trained people.

The President's Budget proposes actions in all of these areas.

Improving Pay and Benefits

The President's FY 1981 budget proposes increases of $133 million over the bonus levels paid in FY 1979, including legislative requests for increases in the maximum bonus payments permitted and an extension of bonuses beyond the current ten years of service limit.

Also, there are a series of proposals pending before Congress, or soon to be submitted, which we believe are needed to make military pay and benefits more attractive. Some of these proposals are discussed below:

- Legislation has been proposed to make the non-disability retirement system more responsive to the needs of members and military management requirements. Under this initiative, existing inequities are corrected, uniformity is established among the Services, new entitlements are provided for members, and savings are realized, in the future, that may be spent on other aspects of compensation or elsewhere in the budget.
- Currently, a family separation allowance accrues only to service members with dependents who are in grade E-4 and above with more than four years service. Legislation is pending to extend this benefit to junior enlisted members.
- To ensure that pay levels are adequate to attract and retain physicians, the Administration has proposed a restructuring of existing special pays and a new retention bonus for critical specialities.
- A legislative proposal to revise the method of computing sea pay was enacted last year. A provision of the bill required a transition period of several years. The Administration has now proposed that the new rates be paid immediately rather than at the originally specified future date.
- A restructuring, both in form and amount, of the reimbursement for moving expenses that now exceed out-of-pocket costs for military members. The President's budget adds $122 million in FY 1981 for this purpose.
- An Administration pay reform proposal that if enacted would result in higher raises in FY 1981 for military members than for general schedule Civil Service employees.
- At present, unmarried senior enlisted personnel can be required to live in barracks. Legislation will be proposed to give these senior personnel the choice between living in barracks or receiving a quarters allowance.
- The budget includes $102 million dollars to increase the reimbursement to military members when they are traveling on official business.

- Current law provides for forgiveness of some portion of a student loan for persons serving on active duty in combat. The House of Representatives has passed and the Administration supports changes to the Higher Education Act that would forgive a portion of student loans for active or reserve enlisted service.

Finally, the House Armed Services Committee has asked the Department of Defense for a report on the feasibility of a more generous educational incentives program to attract potential recruits. However, the Department's report, is more comprehensive. It reviews all current incentives, makes recommendations regarding modifications to existing programs, discusses possible new incentives that may be necessary, summarizes data on the AVF through FY 1979 and presents Service comments. This report will soon be submitted to the Congress.

Reducing the Need to Recruit Young Men

The Department of Defense has made plans to utilize more effectively the personnel resources available. Two of the more important aspects of these plans are:

Reducing first-term attrition. The Services are reducing the number of individuals who are lost to the military during their first three years, prior to completing their initial enlistment. By keeping volunteers longer, fewer volunteers are needed. First-term attrition is now 28 percent, down from 37 percent in 1974. The Services are more thoroughly screening those who enter the force, and are increasing management attention to reducing attrition. Continued attention should keep first-term attrition at, or perhaps somewhat below, current levels.

Increasing use of Women. All Services project continued large increases in female volunteers during the next several years. Women represent the major, underutilized personnel resource for the military. Prior to 1973, women provided less than 2 percent of the total Defense enlisted strength. Under the All-Volunteer Force, the percentage grew rapidly. It is about 8 percent now, and is programmed to reach approximately 12 percent by 1985. By 1985, one out of every six Air Force enlisted members will be female. The role of women has also changed. While women do not serve in infantry, armor, cannon artillery or combat engineer units of battalion size or smaller in the Army, they are serving in combat support units throughout the service. About 95 percent of the skills in the armed forces are open to women. Women are now being assigned to some ships and aircraft crews, within the limits established by 10 U.S.C. 6015 and 8549.

Improving the Capability to Add Trained People to the Force After Mobilization

There are many programs and initiatives within the Department of Defense to make trained people available more quickly and in larger numbers following a decision to mobilize. Many of these are discussed in the section of this report on the feasibility of Presidential induction authority for the Individual Ready Reserve (IRR). Three improvements under consideration in the Department of Defense for which Congressional authorization would be required before implementation are described below:

Reenlistment Bonus for the IRR The 1981 Budget proposes legislation that would authorize the payment of a bonus for service in the Individual Ready Reserve (IRR). This would be offered to individuals who have completed their statutory or contractual military service obligation. This bonus would be directed towards individuals who have military occupational skills, such as infantry, armor, artillery and combat medics, that are critically needed in the IRR. Recipients would incur a three year service obligation for the bonus, now anticipated to be $600. The program is designed to increase the Army IRR by more than 30,000 members by 1985.

Selective Service Screening of Members of the Standby Reserve. Legislation has been submitted to delete the provisions in 10 U.S.C. 672 which provide that members of the Standby Reserve must be screened by the Selective Service System and declared available for military duty before the Department of Defense can recall them in a mobilization. The Standby Reserve is the only category of military personnel that cannot be mobilized directly by the Department of Defense. Members of the Standby Reserve, including physicians, may be needed quickly to meet manpower requirements in the early days of a mobilization and should be processed independently of the Selective Service System. This change would also relieve the Selective Service System of a responsibility that is peripheral to its primary job: to be prepared to classify and deliver non-prior service personnel to the Department of Defense for examination and induction.

Extension of the Military Service Obligation. One way to increase the size of the Individual Ready Reserve (IRR) would be to make the current six-year military service obligation longer. For example, individuals who serve in the active force for a period of four years are currently transferred to the IRR for the remaining two years of their statutory six-year obligation. If the obligation were extended by a year, they would spend a third year in the IRR.

A one-year extension would increase IRR strength by about 85,000 for the Army, where the need is greatest. This increase would not occur, however, until six years after the law was changed.

A longer obligation would be a disincentive to enlistment. It is not without precedent, however. Between 1951 and 1958, the nation had an eight-year military service obligation. A proposal to lengthen the obligation is being evaluated by the Department of Defense.

CONCLUSION

The All-Volunteer Force has served the nation well since its inception. There is every reason to believe it can continue to do so in the future if the Congress provides the enhancements to military pay and benefits proposed by the Administration.

PART IV

POTENTIAL IMPACT OF NATIONAL SERVICE ON THE ARMED FORCES

INTRODUCTION

This section of the Report responds to the requirement in the 1980 Defense Authorization Act to make recommendations with respect to:

> "the desirability, in the interest of preserving discipline and morale in the Armed Forces, of establishing a national youth service program permitting volunteer work, for either public or private public service agencies, as an alternative to military service."

The three-month time limit available to complete the Report dictated that heavy reliance would have to be placed on materials, literature, expertise, and proposals that already existed at the time work was begun. Original research has not been conducted. Neither have all the social policy implications of national service proposals been examined in depth. Rather the emphasis has necessarily been on the military manpower effects of providing or requiring a civilian alternative to military service. This emphasis is fully consistent with the legislative history of the Defense Authorization Act, the specific wording of the study charge, and the context established by the other nine points that are included in this Report.

The Report and recommendations assume the following conditions: (1) the nation is not at war or facing mobilization; and (2) no major changes will occur in personnel standards, policies, and force levels in the Armed Forces. The basic question to be answered, then, is this: Given present and reasonably anticipated conditions, is a national service alternative supportive of or detrimental to recruitment for the Armed Forces?

The Report analyzes four models of national service which incorporate most of the concepts or proposals that have currency today. These four generic models are:

- o Voluntary Broad-based National Service (VBNS), which seeks, without compulsion, to involve as many young people as possible in their choice of civilian or military service.

- Compulsory Broad-based National Service (CBNS), entailing mandatory universal registration and requring either military or civilian service for all qualified youth.

- Voluntary Targeted National Service (VTNS), directed at involving a relatively small and selected segment of youths in service programs that also offer training and remedial assistance for participants.

- Compulsory Lottery-based National Service (CLNS), which requires randomly selected individuals to perform either civilian or military service.

CRITERIA FOR EVALUATION

The key criterion for evaluating national service in this study is specified in its legislative mandate--its impact on the morale and discipline of the Armed Forces. However, there are other criteria that inevitably become a part of any consideration of national service as a policy option. This analysis does not attempt to compare or order the criteria beyond specifying impact on the Armed Forces as the key concern Congress asked to be addressed.

Constitutionality

While final determination on constitutionality is the province of the courts, tentative conclusions about the constitutionality of particular proposals are possible.

Conscription for military service has been ruled as falling within the power of Congress to raise and support an army and provide and maintain a navy, but conscription for civilian service has not been judicially tested. The key question is whether or not the courts would see such conscription as justifiably related to raising an army and maintaining a navy, in light of prohibitions against involuntary servitude and guarantees of due process and equal protection.

An analysis by the Department of Justice comes to the general conclusion that "the Congress could, consistent with the Constitution, implement a national youth service program having general characteristics similar to those of any of the programs outlined in the four basic models." Congress probably has no independent constitutional authority to compel participation in national service *per se* unless it is linked to the power to raise and support an army and provide and maintain a navy. (The same conclusion was reached in a study conducted by the American Law Division of the

Congressional Research Service.)2/ The Department of Justice's conclusion is based on the following principles well defined by court cases:

- Congress has the power under Article I, Section 8, cl. 1, of the Constitution, to spend money for a national youth service should it determine that such a program would be of benefit to the general welfare.
- Congress has the power under Article I, Section 8, cl. 12-13, to raise and support armies and to provide and maintain a navy; in the exercise of these powers, it may require military service of every citizen.
- Congress may allow exemptions or deferments from military service based on occupation.
- Congress may provide for exemption from military service based on conscientious objection and may condition such exemption on the performance of alternative civilian service.
- Neither compulsory military service nor compelled alternative service in lieu of military service for those granted exemption is considered involuntary servitude under the Thirteenth Amendment.

Equivalence

How is civilian service perceived by those compelled to serve in the military or by those who serve if not all serve? The various aspects of equivalency cluster into two key characteristics useful in analyzing any model but of particular salience for compulsory models. First, is the contribution of the civilian service comparable to military service in meeting national needs or goals? And second, are the conditions surrounding the civilian service perceived as equivalent to military service in such terms as hardship, discomfort, duration, restriction of freedom or life style, hazard, material rewards and sacrifice?

Administrative Feasibility

Some measure and assessment of problems involved in alternative proposals can be made, but in the final analysis, feasibility is relative, determined by such factors as political will, resources that leaders are willing to commit and the support of the American people.

Administrative feasibility hinges on factors such as: success or failure of past, parallel or similar programs, size, volume of workload, complexity and geographic dispersion of operations, timing, and cost.

Acceptability

The degree to which a particular model of civilian national service would be acceptable to the American people is likely to depend upon:

- The degree of compulsion and sacrifice involved and the fairness with which they are alloted to individuals;
- The extent to which national service is perceived as worthwhile, honorable and consistent with citizenship values;
- The size of the program, e.g., how many individuals and families are affected;
- The degree of intrusiveness, e.g., registration, examination, classification, counseling, invasion by government of an individual's freedom and privacy;
- Public reaction to the large bureaucracies and costs associated with national service; and
- The nature and value of the work accomplished.

Cost

This study estimates the costs associated with each of the models. It is important to stress that cost figures used in this study are very preliminary and incomplete. Costs for certain models were derived from other studies.[3] The estimates are quite sensitive to assumptions as to workload, choices made by participants, and the factors used to develop unit or per capita costs. These assumptions differ in the literature; moreover, neither social costs nor benefit are incorporated in the calculations. No attempt has been made here to analyze cost estimates in terms of constant dollars; instead, the date when an estimate was made is indicated. All costs and participation assumptions are for civilian rather than military service.

It should also be noted that the President's decision to restore registration for Selective Service will have the effect of reducing some of the initial costs of instituting a national service program.

Impact on the Armed Forces

Under this criterion, several questions are asked as to how the various national service models affect the Armed Forces in terms of size (e.g., do they compete with or channel recruits to the Armed Forces) and quality (e.g., do they tend to channel those with desired skills and abilities toward or away from the Forces). With respect to the "morale and discipline" of the Forces, do the models tend to dampen dissent that might accompany compulsion within or outside the Armed Forces; or do they foster resentment and discontent (e.g., ". . . national service people get off easy")?

NATIONAL SERVICE VALUES

In 1966, the President's National Advisory Commission on Selective Service examined the concept of national service and concluded in words that are not inapplicable today:

> "The Commission endeavored to learn from Government officials and from others precisely what the needs are which national service can meet; how programs would be administered; how they would be financed. The answers were imprecise and inconclusive."4/

One of the major obstacles to analyzing the impact of national service upon the Armed Forces is the wide variety of proposals that have been put forward, each with different implications as to feasibility and impact on the Armed Forces. Despite continuing interest in the concept of national service, it still has not been translated into a well defined policy alternative on which all of its proponents can agree.

While the various proposals have in common the fact that they provide a civilian alternative to military service, in other respects they differ significantly. In particular, each rests on a different set of value premises. For example, these are values commonly emphasized in different combinations by one proposal or another:

- The Obligation of Citizens. Some proponents of national service believe citizens owe service as a concomitment of the rights of citizenship and that government should require or foster such service. Participation therefore is assumed to enhance civic virtue or good citizenship.
- National Needs. Other backers of national service point out that important human, environmental and community needs are not met by the market economy; youth represents an inexpensive resource in meeting these social needs.
- Constructive Socialization/Education. This value holds that youth in our interdependent society need a constructive means of transitioning to adulthood if anti-social and self-destructive behavior is to be avoided. Government owes it to the individual and society to require or make such valuable developmental experiences available or required.
- Need for Remedial Benefits. Some proponents of national service stress the fact that many youth, especially at the lower socio-economic levels, need habits of discipline, remedial education, maturity, medical attention and skill development in order to become functioning members of society and of the work force. National service offers an opportunity to diagnose and remedy these deficiencies.

Each national service proposal varies in the emphasis it places on these value premises. Once these variations have been sorted out, however, proposals vary on two key dimensions: the degree of compulsion involved and the size of the program. Beyond these two key dimensions, the following variations are possible in all models:

- Registration for both civilian and military service could be mandatory or voluntary, and be applied to men and women.
- Administrative structure could be based upon expansion and better coordination among existing programs, or upon the grouping of programs into a new and larger agency.
- A national service program could be housed in a chartered corporation or government agency (new or existing, either a department or an independent executive agency).

- Programs could be operated solely and directly by a Federal agency or could be carried out cooperatively with State and local, public and private agencies.
- Civilian participants could be paid subsistence, an allowance, or the minimum wage, consistent with the notion of "volunteerism."
- Civilian participants might or might not be offered educational vouchers, fellowships, or preference in post-service hiring.
- The program could begin on a small scale and grow incrementally, or it could attempt to expand participation as quickly as possible.

The discussion that follows will focus on four prototypical models and refer to these variations only to the extent that analysis requires it. A complete program proposal would need to resolve each of these issues, but most are not necessary to this level of evaluation.

NATIONAL SERVICE MODELS

Model I - Voluntary Broad-based National Service (VBNS)

This model aims at involving as many persons as possible in their choice of civilian or military service on a voluntary basis. It would necessitate a considerable expansion of existing programs that offer service opportunities and the creation of new ones. The conceptual or value base underlying this model is mixed and could include all four: obligations of citizens, national needs, constructive socialization and the need for remedial benefits.

VBNS presents no novel constitutional questions. Like any other government program its decisions on who may participate must be based on reasonable classifications or exclusions. If some form of military conscription were later put into effect, previous or current civilian national service would be an acceptable ground for deferment or exemption.

VBNS would rank second in difficulty to administer. Although problems would be eased somewhat because it could grow incrementally (equity issues would not allow an incremental start in the Compulsory Broad-based National Service (CBNS) model), at full operation the VBNS could be large and involve the processing of between 1 and 3 million persons per year. The pressure to find meaningful and useful jobs would be great.

The voluntary aspect of the model eliminates contentiousness, alleviates the demand for administrative due process, and reduces overhead.

VBNS would rank second highest among the models in terms of cost. The Congressional Budget Office estimated in 1978 that 1.6 million youths would participate at an average cost of $7,500 per participant and a total cost of $12 billion as follows:

	(Millions)
Registration	$ 6
Testing	27
Counseling	425
Public Service Jobs	10,000
Education/Training Grants	1,300
TOTAL	$11,758

The CBO cost estimate does not include the costs of a national organization to conduct the program. Because VBNS would compete with the military recruitment effort, it might also increase the recruitment budget.

The voluntary broad-based model may be detrimental to sustaining the All Volunteer Force. A serious commitment to developing a sizeable VBNS could result in wide-ranging competition with the present AVF for youth.

Any program that would compete for the same pool of qualified individuals as the military must be viewed as deleterious in its impact on the morale and discipline as well as on the force levels of the Armed Forces as currently staffed.

Conclusion and Recommendation

If VBNS cuts into the military recruitment market, it could precipitate a need to reinstate the draft in some form. Broad popular support of the notion of voluntary national service would be difficult to translate into support for a specific program in light of its impact on the armed forces and its cost in an era of fiscal constraint.

VBNS should not be pursued currently as an option in the military manpower context in light of its negative impact on military recruitment.

Model II - Compulsory Broad-based National Service (CBNS)

This model would entail mandatory registration and require, in principle, universal national service in either a military or civilian capacity. No doubt some deferments would be necessary for hardship, institutionalization, physical condition, etc.

But with the exception of the all-important distinctions that CBNS is both mandatory and virtually universal, it could vary along most of the lines suggested above. The Congressional Budget Office analyzed CBNS as one of its prototypical models. Although traces of all four value premises can be found in proposals that group under this model, the most important is the obligation of citizens to serve their nation. It is this value which enables proponents of such a model to view positively the conscription of millions of youths to national service.

A compulsory broad-based model (CBNS) has the potential for raising the constitutional issue of involuntary servitude but only if compulsory civilian service were not linked to Congress' power to raise and support armies and provide and maintain a navy. Congress probably cannot compel participation in civilian national service per se; any long-term compulsory service linked to an enumerated power other than the military power might be held to be involuntary servitude in violation of the Thirteenth Amendment. CBNS must be linked to raising an army and maintaining a navy to avoid constitutional questions.

In CBNS, civilian service's perceived equivalence might also increase as a result of the sheer magnitude of a program of compulsory service for as many as 4 million youth. But the problem that is latent in a successful VBNS would be difficult to forestall in a compulsory broad-based model. The task of finding 1.5 million (all-males) or 3.5 million (male and female) civilian jobs that could be perceived as equivalent in contribution and conditions to military service would be difficult.

Agreement over equivalence is likely to decline as the pressure of numbers forces an ever broader definition of national service. In addition, the problem would be exacerbated by the compulsory nature of the program. This would bring into play the natural tendency of military draftees and their families to view with skepticism the service of their civilian counterparts. Although this can be eased somewhat by varying rewards and the length of service, (e.g., longer periods of civilian service), there are limits to how much equivalence can be provided.

CBNS would be the most difficult of all the models to administer. The CBNS agency would have to process between 2 and 4 million new entrants each year, depending on whether women are required to serve as well as men. If the required civilian service were two years in duration, the agency would thus have to contend with between 7 and 8 million persons per year. The Armed Forces currently only need about half a million persons per year for the active forces and even the current shortages in the reserves would do little to absorb the accessions CBNS would generate. On the civilian side, the administrative task of finding and supervising millions of civilian jobs equivalent to military service would be extremely difficult. Even if civilian entrants were required to meet the same mental, physical and moral standards as military inductees, a DOD study indicates that the CBNS agency would have to find 2.28 million equivalent jobs for the .93 million men and 1.35 million women processed annually.5/ If the standards for entry were lower than those for the military, the number of jobs needed would be even larger.

The element of compulsion places a heavy burden on any administrative apparatus and increases overhead costs dramatically. Administrative due process must be assured, entailing an appeals system of lay boards or administrative law judges. Opinion data suggest that a compulsory system will encounter opposition from a sizable minority. Thus, it can be assumed there would be some degree of noncompliance and the agency would have to expend considerable effort in concert with the Department of Justice to enforce the law.

In sum, while the majority of the general public may support a national service obligation, many of the affected youth probably do not. According to the opinion polls, support for a compulsory program is diminishing somewhat among young people and a sizeable minority strongly oppose it.

CBNS is by far the most costly of the four models. The Congressional Budget Office estimated participation of 3.5 million youth, at a per capita cost of $6,858, for a total annual cost in 1978 dollars of more than $23 billion, as follows:

	(millions)
Registration	$ 6
Testing	65
Counseling	425
Employment (including 20 percent for administration)	23,000
Education/Training Grants	0
TOTAL	$23,496

Conclusion and Recommendation

This model is the most costly and difficult to administer of the four models. It would represent an unprecedented coercion of individuals for non-military ends that would have to be justified constitutionally in terms of sustaining the Armed Forces. It would provide the Armed Forces with people, but at the cost of forcing major changes in personnel policies.

CBNS should not be pursued as an option in light of its costs, difficulty in administration, and the unprecedented coercion it represents.

Model III - Voluntary Targeted National Service (VTNS)

A VTNS would be directed at attracting a small, selected population. Although it would not need to be focused on disadvantaged youth, all current proposals favor this target. This model rests most heavily on the theoretical basis that it is good for certain individuals to receive valuable life experiences, to be tutored, and to learn skills. The basic structure of this model exists in programs offered by ACTION, the Department of Labor and others. There is no direct or compelling relationship between this model and military recruitment.

Equivalence is not a problem for VTNS if military service is voluntary. If conscription is introduced for military service, however, equivalence becomes a serious problem. However one views programs of remedial benefits for disadvantaged youth, it is hard to see how such programs could be perceived as equivalent to military service by the public. Most young people and the general public support voluntary national service according to polls. Administratively, VTNS would pose the fewest problems of the four models.

Total annual cost for VTNS according to the CBO would be:

		(millions)
Registration	$	6
Testing		10
Counseling		425
Employment		1,400
Education/Training Grants		325
TOTAL		2,166

VTNS is not likely to have many negative consequences for the Armed Forces.

Conclusion and Recommendation

While this model appears to have some merit when reviewed against the criteria in this survey, its impact on the size, morale, and discipline of the armed forces appears small.

Therefore, VTNS need not be pursued as an option in the military manpower context.

Model IV - Compulsory Lottery-Based National Service (CLNS)

On the surface, a CLNS model appears to be a variation of a compulsory broad-based model because it operates on a principle of universal obligation for national service (civilian or military) with deferments for hardship, ill-health or disabilities. But the use of a random selection system or lottery to decide who would serve, without everyone serving, reduces the numbers involved. Basically, this model is a variation of the military induction system as discussed in Part I.

One model version of CLNS has been proposed by Congressman John J. Cavanaugh (H.R. 3603). It would use a lottery to decide who would serve and those selected would be given their choice of civilian or military service. (Military service could be 18 months in the active forces or six months active followed by 36 months of reserve service.) Random selection could be stopped at any point after the shortfalls of the Armed Forces are met.

The Cavanaugh variant settles the question of who will serve and who will not at age 18, thus making a young person's future much clearer at a relatively early date.

Another variant of the CLNS concept has been proposed by Representative Paul N. McCloskey (H.R. 2206). It varies from the Cavanaugh plan in that it requires each registrant at age 18 to choose among options of military service, civilian service or no service. Those who choose no service would be assigned to a draft liability pool from which they would be drawn by lottery for military service if there were recruitment shortfalls in the Armed Forces. This would considerably increase the size and costs of the program.

CLNS is for legal purposes similar to the Selective Service System, prior to its being placed on standby status. Thus it presents no novel constitutional questions.

CLNS would stand a good chance of achieving equivalency because of its more limited proportions. The number of equivalent jobs that would be needed probably falls within the range of what has often been contemplated for expanding existing service programs.

CLNS would not pose particularly difficult administrative problems. Much of its operations would resemble those carried out by Selective Service in the past but with an expanded civilian service alternative attached. Under the McCloskey version of the CLNS, the civilian service component might grow in three years to a processing load of around 1 million persons. Though as many as 4 million persons would have to be registered, examined and counseled each year, this is really the simplest aspect to administer of any national service program.

The Cavanaugh variant that might cease inductions into civilian or military service once shortfalls had been covered would be even simpler. Although 2 to 4 million would have to be registered, about 290,000 persons would need to be examined and around 87,000 involved in civilian service in order to cover current active force shortfalls of 22,000. Filling reserve shortages as well would require considerably more people to be processed. But even if twice as many were processed, the load would still be well below even the McCloskey variant. Though the compulsion involved could still be controversial, it is logical to expect that the smaller size of operations in the Cavanaugh variant may reduce some of the problems.

The compulsory lottery-based national service concept has not been broadly discussed, and there is little data on which to base an assessment of its public acceptability.

Estimating the costs of the CLNS alternatives involves numerous assumptions about how many persons the military might need in the future, and how many people would choose active, reserve, or civilian service. While it is clear that total costs of the Cavanaugh variation would be less than costs of the three other models, an analytically based figure cannot be determined at this time.

The compulsory lottery-based model (CLNS) would have a positive effect on the manning of the Armed Forces. It would assume that the Armed Forces would meet all their manpower goals. While draft resistance is a distinct possibility, its extensiveness is by no means certain. It is also likely that little of the opposition, if it did occur, would be found within the military where it would negatively affect morale and discipline, since those conscripted who were opposed to military service could choose civilian service.

Conclusions and Recommendation

This model would provide the quantity and quality of accessions the Armed Forces require.

At bottom, however, CLNS is a return to the military draft with a civilian compulsory service attached. The Cavanaugh variant allows individuals to choose civilian in lieu of military service, but nonetheless compels them to make a choice and to serve if called or be in violation of the law. The McCloskey variant does essentially the same thing but incorporates a somewhat different selection procedure.

If it became necessary to return to conscription the question is: what does institution of a CLNS-Cavanaugh model provide that the all-military draft would not?

The CLNS alternative is the most promising of the four models in the context of this report. It should be examined further in contingency planning for any actual military conscription in a national emergency, bearing in mind the serious practical and conceptual problems discussed above.

There is no need for a national civilian service program at this time. The AVF is adequate to meet projected military personnel needs under present planning assumptions.

Opportunities for voluntary service are widely available through programs operated by ACTION, State and local governments, and the private voluntary sector. Furthermore, the Federal Government sponsors a substantial program of targeted employment and training opportunities for disadvantaged youth and the Administration has proposed a major expansion of these programs in its new youth education and employment initiative.

FOOTNOTES

1. *America's Volunteers, A Report on the All-Volunteer Force*, December 31, 1978, Office of the Assistant Secretary of Defense (Manpower, Reserve Affairs and Logistics). These costs include reconstitution of the Selective Service System, registration, induction, examination, classification, training, and pay allowances. Each year, 300,000 induction calls are made; 100,000 are inducted and trained for four months.

2. As special study of the constitutionality issue was carried out by the Department of Justice for purposes of this report. See Larry L. Simms memo for John White, Director of OMB "Re: National Youth Service", Department of Justice, November 1979. Also, George A. Costello, "Military and Civilian Conscription: Constitutional Issues," Library of Congress, The Congressional Research Service, July 30, 1979. For a contrary view which asserts that "required public service in times of peace is not authorized by the Constitution" and that "alternative public service violates the Thirteenth Amendment by virtue of its unlimited scope and its compulsory nature," see memo from David Landau and Randy Stratt of the American Civil Liberties Union, January 2, 1980.

3. Most estimates used are from Congressional Budget Office (CBO), "National Service Programs and Their Effects on Military Manpower and Civilian Youth Problems," Budget Issue Paper for Fiscal Year 1979. For others see "Youth and the Needs of the Nation", Potomac Institute.

4. The National Advisory Commission on Selective Service, "In Pursuit of Equity: Who Serves When Not All Serve?" Washington, D. C., 1967.

5. Associates for Research in Behavior, Inc., "A Tracking Study Regarding Issues Related to Recruitment of Enlisted Personnel for the Reserve Components," prepared for the Office of Assistant Secretary of Defense, MRA&L, The Pentagon, Washington, D. C., April 1979.

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Potomac Institute, "Youth and the Needs of the Nation," Report of the Committee for the Study of National Service, Roger Landrum - Project Director, January 1979.

Larry J. Simms, "National Youth Service," Legal Memorandum, Department of Justice, November 1979.

PRESIDENTIAL RECOMMENDATIONS FOR SELECTIVE SERVICE REFORM

Plan, transmittal to Congress 50 USC app. 451 note.

SEC. 811. (a) The President shall prepare and transmit to the Congress a plan for a fair and equitable reform of the existing law providing for registration and induction of persons for training and service in the Armed Forces. Such plan shall include recommendations with respect to—

(1) the desirability and feasibility of resuming registration under the Military Selective Service Act as in existence on the date of the enactment of this Act;

(2) the desirability and feasibility of establishing a method of automatically registering persons under the Military Selective Service Act through a centralized, automated system using existing records, together with a discussion of the impact of such method, or of alternative methods of establishing such a registration system, on privacy rights under the Constitution and under statutes protecting such rights (including section 552a of title 5, United States Code, commonly referred to as the "Privacy Act") and any proposal for reform of such Privacy Act or other statutes, relevant court decisions relating to Selective Service procedures, and the impact of such alternative methods on other constitutional issues;

(3) the desirability of the enactment of authority for the President to induct persons registered under such Act for training and service in the Armed Forces during any period with respect to which the President determines that such authority is required in the interest of the national defense;

(4) whether women should be subject to registration under such Act and to induction for training and service in the Armed Forces under such Act;

(5) the desirability and feasibility of providing authority for the President to induct persons into the Individual Ready Reserve;

(6) whether persons registered under such Act should also be immediately classified and examined or whether classification and examination of registrants should be subject to the discretion of the President;

(7) such changes in the organization and operation of the Selective Service System as the President determines are necessary to enable the Selective Service System to meet the personnel requirements of the Armed Forces during a mobilization in a more efficient and expeditious manner than is presently possible;

(8) the desirability, in the interest of preserving discipline and morale in the Armed Forces, of establishing a national youth service program permitting volunteer work, for either public or private public service agencies, as an alternative to military service;

(9) such other changes in existing law relating to registration, classification, selection, and induction as the President considers appropriate; and

(10) other possible procedures that could be established to enable the Armed Forces to meet their personnel requirements.

Legislative proposals, transmittal to Congress.

(b) The President shall transmit with the plan required by subsection (a) proposals for such legislation as may be necessary to implement the plan and to revise and modernize the Military Selective Service Act.

(c) The plan required by subsection (a), together with the proposed legislation required by subsection (b), shall be transmitted to the Congress not later than January 15, 1980, or the end of the three-month period beginning on the date of the enactment of this Act, whichever is later.

(c)

SELECTIVE SERVICE SYSTEM

BUDGET JUSTIFICATIONS

FISCAL YEAR 1981

Selective Service System
Fiscal Year 1981 Budget Justification

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NATIONAL HEADQUARTERS
SELECTIVE SERVICE SYSTEM
600 E STREET, N.W.
WASHINGTON, D.C. 20435

OFFICE OF THE DIRECTOR

ADDRESS REPLY TO
THE DIRECTOR OF SELECTIVE SERVICE

11 February 1980

The Honorable William Proxmire
Chairman, Subcommittee on HUD-
 Independent Agencies
United States Senate
Washington, D. C. 20510

The Honorable Edward P. Boland
Chairman, Subcommittee on HUD-
 Independent Agencies
House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

Transmitted herewith is our FY 1981 budget submission in the amount of $35.5 million and a supplemental appropriation request of $21.9 million for the current fiscal year. These are the revised amounts necessary for the System to successfully carry out its increased mission responsibilities under the President's Program for the Revitalization of the Selective Service System. The budget requirements of the System, exclusive of the 1980 pay supplemental, are shown in the table below:

	1980 Supplemental	1981
President's Budget, January 28	1.4	11.0
President's Announcement, February 8	20.5	24.5
	21.9	35.5

I am looking forward to meeting with your distinguished Committees and the opportunity to provide you with detailed information concerning these requests.

Sincerely,

Bernard Rostker

Bernard Rostker
Director

INSURE FREEDOM'S FUTURE—AND YOUR OWN—BUY UNITED STATES SAVINGS BONDS

INTRODUCTION

On January 23, 1980, the President of the United States, while reiterating support for the All-Volunteer Force (AVF), called for the revitalization of the Selective Service System and said that he would send legislative and budget proposals to the Congress "so that we can begin registration and then meet the future mobilization needs rapidly if they arise." The President also announced, on February 8, 1980, that he will ask Congress to amend the Military Selective Service Act (MSSA) to provide for the registration of women, that Selective Service will start the registration process later this spring, that the process of revitalization will include the selection and training of local board members, and that he would request additional funds from the Congress of $20.5 million in FY 1980 and $24.5 million in FY 1981 for the Selective Service System to carry out this program.

The FY 1980 Budget Supplement and the FY 1981 Budget submitted to Congress on January 28, 1980 did not reflect the President's decision to accelerate the revitalization of the Selective Service System or to reinstate registration. This report presents the revised appropriation necessary in both FY 1980 and FY 1981 to implement the full program. The tables presented here use the FY 1980 Approrpriation as a base against which to show the funds necessary to revitalize Selective Service and reinstate registration.

THE "NEW" STANDBY SELECTIVE SERVICE SYSTEM

The President's decision to revitalize the Selective Service System and to initiate registration substantially improves our ability to respond. However, the Selective Service and the draft is still in "standby". No one is being drafted and the military is still operating under the AVF system. All that has happened is that Selective Service will substitute an actual registration system for a registration contingency plan and accelerate the process of improving the other components of the Selective Service System.

If activated, Selective Service will employ the procedures incorporated in the Emergency Military Manpower Procurement System (EMMPS). A major feature of EMMPS is that it eliminates pre-mobilization classifications and examinations. After mobilization, and a Random Sequence Number (RSN) lottery, all registrants will be administratively classified 1-A, ready for induction. Induction orders would be centrally issued in RSN order by the Director of Selective Service. After receiving an induction order, a registrant would either report to an Armed Forces Examining and Entrance Station (AFEES) for examination (and if found physically and mentally qualified, would be inducted), or would request a deferment or exemption. Requests for conscientious objector status, hardship deferments, ministerial students, and ministerial deferments would be processed by local boards.

REVITALIZING SELECTIVE SERVICE

Working within the EMMPS procedures, we can highlight the new standby system by examining six subsystems which make up the registration-to-induction process. The subsystems are:

- A registration process that is reliable and efficient.
- An ADP system (hardware and software) that can handle Selective Service's pre- and post-mobilization requirements.
- A system for the promulgation and distribution of orders for induction.
- A claims process that can quickly insure all registrants' rights to due process are protected.
- A field structure that can support the claims process.
- A revitalization of National Headquarters in order to manage the registration and field structure.

Registration.

HOW:

While the President has the legal authority to order registration, classification, and examination, he has decided to proceed with only registration at this time. Both classification and examination would require substantial additional expense. In addition, classification would require the immediate reestablishment of local draft boards, and physical examinations would have to be repeated at the time of induction. Neither of these additional steps was thought to be appropriate in the pre-mobilization context.

The United States Postal Service (USPS) has agreed to undertake the task of face-to-face registration. The USPS is ideally suited to undertake this task because it is a single command infrastructure with facilities and personnel, and a communication/transportation network extending to every corner of the country. There are over 34,000 classified post offices and the USPS employs over 650,000 people. Postal locations are widely known. USPS has also provided similar services for the Department of State (passport applications) and for the United States Immigration and Naturalization Service (alien registration). In 1979 alone, the USPS processed over one million passport applications, and registered over 4 million aliens.

When the registration begins, young men and women will be asked to go to their local post offices to register. They will fill out a simple form with their name, sex, address, date of birth and social security number. The forms will be checked at the postal windows to insure that they are legible and complete. The completed forms will then be sent to the Selective Service System where the information will be entered into computers. Thereafter, the registrant will receive a short letter indicating he or she has been registered and asking that the Selective Service System be kept informed of any change of address.

WHO:

When the draft was suspended in 1973, Selective Service was operating under a series of legal and regulatory reforms designed to correct the inequities of the draft during the Vietnam period. Specifically, the lottery was instituted in 1969, student deferments were eliminated in 1970, and occupational deferments were eliminated in 1971. Regulatory reforms cancelled the "oldest first" policy and replaced it with the policy of year of vulnerability/youngest first, thus reducing the years of uncertainty which characterized earlier drafts. It is our intent to carry out these reforms, and to register only sufficient year of birth groups to insure that we can meet the needs of our Armed Services.

We intend to ask young men and women born in 1960 and 1961 to register this spring with Selective Service at a time and place, and in a manner yet to be prescribed by the President. In January 1981, we will ask those born in 1962 to register and, at the same time we will also initiate continuous registration of 18 year olds, i.e., young men and women will register on, or about the day they turn eighteen, as was the practice in the past.

If it ever becomes necessary to draft anyone, we will operate under the concept of random selection based upon year and date of birth, i.e., the prime age group are those who reach age 20 in the year of the draft. We believe that registering only those born between 1960 and 1961 will provide a sufficiently large initial pool of people to more than meet the needs of the Department of Defense. In the unlikely event that it becomes necessary to increase the size of the pool in 1980, we will undertake a supplemental registration of those born before 1959, who are subject to the MSSA. The size of the pool will, however, increase overtime as 18 year olds register each year, and Selective Service keeps current the records of those previous registered.

WHEN:

The Administration is currently developing plans and will determine in the near future exactly when registration will take place.

BUDGET:

Using the original FY 1980 appropriation as a base, the following major programs and funds are necessary to implement this portion of the President's plans:

- A public affairs staff to handle the media and other requests for information about the Selective Service, registration and the draft. This includes a public information program by which Selective Service will prepare and provide materials to the public affairs departments of electronic and print media announcing the details of registration.
- An improved telephone answering and inquiry system to handle the phone calls flooding Selective Service Headquarters and Regional Offices.
- The printing and distribution of registration forms, registration materials (fact sheets, posters, etc.), change of address forms, verification letters and appropriate postage.
- The development of detailed plans and procedures to carry out the initial and continuous registrations.
- The cost of reimbursing the USPS for registration.

Table 1
Registration

	($000) FY 80 SUPP	 FY 81 INCREASE
Public Affairs:		
Contractor Support	200	150
Personnel (3)	56	84
Telephones	54	120
Printing:		
Registration Forms	250	
Change of Address Forms	50	
Registration Materials	342	
Verification Letters	450	500
Postage	1,275	1,900
Registration Planning	275	125
USPS Reimbursement	10,600	9,240
Totals	13,552	12,119

ADP Support.

HOW:

In order to enter the initial registration data for two year of birth groups (8 million men and women) into a computer, we will use the keypunch capacity of the Internal Revenue Service (IRS) and the Social Security Administration (SSA). Both agencies have agreed to suspend part of their operations to support Selective Service. For example, the IRS has over 4,000 data entry terminals located in ten regional centers, which are conveniently located near USPS centers. During the tax return period of January to June, the IRS has about 6,000 data entry personnel onboard. During the non-tax period of July to December, the staff is reduced to about 1,500 personnel.

The present Selective Service computer is inadequate to either manage our data files, to run EMMPS, or to support our area offices and the claims process. Current hardware cannot be expanded to support these tasks. In deciding how best to meet our computer needs, we also want to make sure that any new ADP system facilitates the entire registration-to-induction process. Responsibility for this process is shared by Selective Service and the DOD's Military Enlistment Processing Command (MEPCOM). Selective Service is responsible to:

- Register those subject to the MSSA.
- Determine the order of those who will be called for service.
- Classify individuals.
- Order registrants to take physical and mental examinations.
- Issue orders for induction.
- Adjudicate claims for deferments, postponements, and exemptions.

The Military Enlistment Processing Command, through their 67 Armed Forces Examining and Extrance Stations (AFEES) is responsible to:

- Provide physical and mental examinations.
- Induct qualified registrants into the Armed Services.

To provide short term ADP capability, our budget submit ensures we have (1) an immediate capability to maintain and process registration data and issue orders of induction, if necessary; and (2), within a year, provide for improved interface with MEPCOM. Selective Service will immediately, by using the facilities of a contractor, establish the capability to manage our registrant data file, process change of address notices, and will be ready to enter the registration data into the EMMPS in the event of a military mobilization. We have a formal agreement with the Department of Defense that the U. S. Army Management Systems Support Agency (USAMSSA) will support EMMPS. The compatability of EMMPS and the USAMSSA computer was tested and demonstrated capable in December 1979.

The USAMSSA computer and contractor support is only temporary. Selective Service and MEPCOM have agreed to develop a joint computer center by January 1981. We believe that a joint center has many advantages. It will reinforce the link between the two organizations, e.g., after mobilization the volume of data transmitted each day would be substantial and a joint facility would minimize delays and the need for an expensive telecommunications network. It would put Selective Service on a computer solely dedicated to the military manpower procurement mission, and would help insure the coordination of manpower flows into the AFEES. The computer center will have sufficient data input capacity to handle our requirements for continuous registration and data file update (change of address). It will also have the ability to support, upon mobilization, our local boards through 434 area offices which would be established. Computer terminals in each area office will be linked to the central computer and will be used, upon mobilization, to enter and update claims information.

BUDGET:

Using the original FY 1980 appropriation as a base the following major programs and funds are necessary to implement this portion of the President's plans:

- The keypunch, microfilm and storage of the registration forms.
- Interim support of the EMMPS system on the USAMSSA computer.
- Interim computer and data file management of registration data, e.g., 25 percent of the registrant population moves each year according to census statistics.
- The establishment of the Joint MEPCOM/SSS Computer Center.
- A Selctive Service Data Entry Center to handle registration keypunch and file maintenance after January 1, 1981.
- Development of computer programs and systems (software) for the maintenance of registrant files, update and integration of EMMPS with the file management system and area office terminals.

- The area office computer terminal network to allow for an accurate and efficient management information system in support of local boards.

Table 2
Data Processing
Management Information Systems

	FY 80 SUPP ($000)	FY 81 INCREASE ($000)
SSA/IRS Data Entry:		
Keypunch	2400	1200
Microfilm	800	400
Storage	20	20
Interim EMMPS Support - USAMSSA	100	
Interim Computer	1280	850
Interim Data Management	1600	600
Joint MEPCOM/SSS Computer	500	991
SSS Data Center:		
Personnel (156)	15	1280
Keypunch Equipment		288
Office Equipment		75
Site Preparation		78
Microfilm Service		312
Supplies and Telephones		169
Base Maintenance Support		118
Software Development	1092	724
Area Offices:		
Terminals		4550
Communications		50
Funds from Base FY 80 Program	-600	-600
Totals	7,207	11,105

Promulgation of Orders for Induction.

HOW:

If activated during a military emergency, there will be a single national draft call based upon the individual's random selection number. Actual induction orders will be issued by the Director of Selective Service, by direction of the President and under authority of Section 5(d) of the MSSA. Using the Selective Service master registraion file, induction orders will be transmitted as Western Union Mailgrams. The Mailgrams will contain the following information:

- Identification of the inductee.
- Orders to report to a specific time to a designated AFEES.
- Information on procedures to follow if unable to comply with the induction order.
- Information on exemption and deferment rights.
- A simple claims form.
- The address of the inductees local board/area office to which claims should be sent.

The area office, upon receipt of a claim will notify Selective Service Headquarters and will process the claim according to standard Selective Service procedures. MEPCOM will also be notified of individuals ordered to AFEES and will report their status to Selective Service Headquarters.

BUDGET: None.

Claims Processing and the Selective Service Field Structure.

HOW:

Local draft boards are not necessary in the registration process. However, in the event of a mobilization, they will be required to process claims for exemptions and deferments. We are developing plans to select and train local board members for availability should such an emergency occur. The selection procedures will ensure that people who serve on local boards in the future will be representative of the community as a whole and will have the training needed to provide for consistent application of the law nationwide.

Selective Service, working with the Provisional State Directors and State Governors, will develop criteria and selection procedures. The FY

1980 Supplemental Budget contains funds and requests for new personnel to develop the guidelines and supervise the selection and training of 8,500 local board members (6 people), administer the program (5 people), and carry out the selection and training (25 people). We will also develop and test a training program in FY 1980.

The recruitment of local board members will start early in FY 1981. Approximately 8,500 local board members are needed for almost 1,900 local boards. The actual training of members will take place at 85 training conferences held across the nation. We project an annual attrition rate of about 20 percent. Each year the new local board members will receive initial training and all board members will be advised of procedural changes which may take effect.

Selective Service has also streamlined procedures to reconstitute essential area offices in support of local boards. The Secretary of Defense and the Director of Selective Service have agreed that, "in order to facilitate the operation of the Selective Service in support of the manpower procurement needs of the Department of Defense, we must better coordinate our planning and post-mobilization manpower systems. In addition, it is appropriate that DOD, like other Federal agencies, provide support to the Selective Service during a national emergency. Such support from DOD might include but not be limited to, computer and data processing, selected personnel, and facilities. However, DOD should not in any way be involved in the process by which the Selective Service adjudicates claims for deferment or exemption."

Selective Service has a cadre of 715 military reservists who would reactivate the system during an emergency. We have also entered into an agreement with Defense to take over specific Armed Forces Recruiting Offices within 24 hours of a mobilization. Fifteen hundred Recruiting Service personnel will augment the Selective Service reservists for about 45 days after mobilization. These personnel will be identified by name, provided training and will participate in training exercises and field tests.

Selective Service has also restructured the summer training to test our ability to mobilize State Headquarters and reestablish area offices. Selective Service reserve officers will visit the Armed Forces Recruiting Offices scheduled to support Selective Service during a mobilization. Equipment and personnel in these offices will be inventoried and local contacts with GSA, OPM, and the telephone company will be made. The FY81 budget also has funds to allow Selective Service to fully participate in NIFTY NUGGET 80.

BUDGET:

Using the original FY 1980 appropriation as a base, the following major programs and funds are necessary to implement this portion of the President's plans:

- Increase Selective Service staff to develop, administer and supervise a program for the selection of local board members.

- Develop a training program to insure that local board members are knowledgeable of Selective Service procedures and regulations.

- Development of plans and procedures for the reconstitution of area offices consistent with support agreements with DOD.

- A Selctive Service mobilization tests consistent with the DOD NIFTY NUGGET 80 mobilization exercise.

Table 3
Field Structure and Local Board Support

	($000) FY 80 SUPP	FY 81 INCREASE
Local Boards (8,500 Members)		
Policy Development:		
Personnel (6)	124	194
Administrative Support:		
National Headquarters Personnel (5)	57	97
Regional Offices Personnel (25)	30	627
Training and Recruitment:		
Development	360	
Implementation	83	2507
Revised Reconstitution Plans	100	100
NIFTY NUGGET Test		150
Totals	754	3675

Revitalization of National Headquarters.

The President's decision to revitalize the Selective Service Syster dictates several initiatives in the National Headquarters. The budget provides funds to update our wordprocessing and telecommunications capability, increase security at Selective Service Headquarters, and augment our staff in two critical areas.

Selective Service is reponsible for a viable Alternate Service Program which can become operational upon mobilization. Experience with conscientious objectors during earlier periods points to a series of problems that must be addressed. Court cases and the evolutionary change in attitude on the part of the general public predict a much greater use of the alternate service option than ever before in our history. In addition, the problems of national standards, equity and timeliness of placement could lead to court challenges that could impact the capacity to meet manpower delivery schedules. A staff of four with appropriate planning support is provided in the budget.

There is also an urgent need to develop a staff capability to perform systems and operations analysis studies of all aspects of the Selective Service System, including the development of a systematic program of operational testing. This is particularly important for an organization like the Selective Service, where many of its component systems are inactive and must operate smoothly upon mobilization. A staff of five is provided in the budget.

Table 4
Headquarters Revitalization

	($000) FY 80 SUPP	FY 81 INCREASE
Wordprocessing & Telecommunications Equipment	108	
Alternate Service:		
Personnel (4)	79	108
Planning Support	75	75
Analysis & Evaluation:		
Personnel (5)	95	132
Agency Security	30	17
Totals	382	332

SUMMARY.

The FY80 Supplemental and the additions to the FY81 Budget will allow the Selective Service to carry out the President's program of revitalizing the Selective Service System, reinstitute registration of men, and initiate the registration of women. An analysis of the FY80, FY80 Supplemental and the FY81 Budget is presented in the following table.

ANALYSIS OF CHANGES IN REQUIREMENTS
($000)

1980 Enacted	$ 7,830	
Pay Raise Supplemental	421	$ 8,251
Program Supplemental:		
Costs Associated with Registration (Table 1)	$13,552	
Data Processing Costs (Table 2)	7,207	
Costs Associated with Field Structure and Local Board Support (Table 3)	754	
Headquarters Revitalization (Table 4)	382	21,895
Total 1980 Budget Authority Requested		$30,146
Changes for FY 1981:		
Decreases (Non-Recurring Costs):		
USPS Reimbursement	$-1,360	
Registration Planning, Forms & Publicity	- 792	
ADP Development Costs & Interim Contract Support	-3,498	
Development Costs - Training Program	- 360	
Word Processing & Telecommunications Equipment	- 108	
Miscellaneous	- 13	-6,131
Increases:		
Postage	$ 625	
Joint MEPCOM/SSS Computer Center	491	
Area Office Terminals & Comminication Lines	4,600	
Data Entry Center (Including Personnel)	2,305	
Local Board Member Recruitment	2,424	
NIFTY NUGGET Test	150	
Annualization of New Positions	806	
Miscellaneous	66	11,467
Total 1981 Appropriation Request		$35,482

STANDARD FORM 300
July 1964, Bureau of the Budget
Circular No. A-11, Revised.
300-101

1980 AMENDMENT PROPOSED LEGISLATION

SELECTIVE SERVICE SYSTEM
SALARIES AND EXPENSES

Program and Financing (in thousands of dollars)

Identification code 90-0400-4-1-054	19 80 actual	19 80 estimate	19 80 estimate
Program by Activities:	Supplemental Request Pending	Proposed Amendment	Revised Request
10.00 Mobilization Readiness (costs-obligations)	1,395	20,500	21,895
Financing:			
40.00 Budget authority(appropriation)	1,395	20,500	21,895
Relation of obligations to outlays:			
71.00 Obligations incurred, net.....	1,395	20,500	21,895
72.40 Obligated balance, start of year........................	---	---	---
74.40 Obligated balance, end of year........................	-250	-750	-1,000
90.00 Outlays......................	1,145	19,750	20,895

1980 AMENDMENT PROPOSED LEGISLATION

STANDARD FORM 304
May 1969, Bureau of the Budget
Circular No. A-11, Revised.
304-103

SELECTIVE SERVICE SYSTEM
SALARIES AND EXPENSES

OBJECT CLASSIFICATION (in thousands of dollars)

Identification code 90-0400-4-1-054	1980 actual Supplemental Request Pending	1980 estimate Proposed Amendment	1980 estimate Revised Request
Personnel compensation:			
11.1 Permanent positions	229	55	284
11.3 Positions other than permanent	---	58	58
~~11.5 Other personnel compensation~~			
11.8 Special personal services payments	---	23	23
Total personnel compensation	229	136	365
Personnel benefits:			
12.1 Civilian	21	20	41
~~13.0 Benefits for former personnel~~			
21.0 Travel and transportation of persons	---	24	24
22.0 Transportation of things	---	2	2
~~23.0 Rent, communications, and utilities~~			
23.2 Comm.,Utilities & Other rent----	102	1,227	1,329
24.0 Printing and reproduction	560	532	1,092
25.0 Other services	483	18,411	18,894
26.0 Supplies and materials	---	5	5
31.0 Equipment	---	143	143
~~32.0 Lands and structures~~			
~~33.0 Investments and loans~~			
~~41.0 Grants, subsidies, and contributions~~			
~~42.0 Insurance claims and indemnities~~			
~~43.0 Interest and dividends~~			
~~44.0 Refunds~~			
99.0 Total obligations	1,395	20,500	21,895

STANDARD FORM 300
July 1964, Bureau of the Budget
Circular No. A-11, Revised.
300-101

1980 AMENDMENT PROPOSED LEGISLATION

SELECTIVE SERVICE SYSTEM
SALARIES AND EXPENSES

PERSONNEL SUMMARY

Identification code 90-0400-4-1-054	1980 actual Supplemental Request Pending	1980 estimate Proposed Amendment	1980 estimate Revised Request
Total number of permanent positions..	93	8	101
Total compensable workyears..........	85	7	92
Full-time equivalent of other positions..........................	(0)	(3)	(3)
Full-time equivalent of overtime and holiday hours......................	(0)	(0)	(0)
Average GS grade.....................	10.17	9.13	10.08
Average GS salary....................	$27,497	$16,505	$26,626

66-356 583

STANDARD FORM 306
July 1964, Bureau of the Budget
Circular No. A-11, Revised.

1980 AMENDMENT PROPOSED LEGISLATION

SELECTIVE SERVICE SYSTEM
SALARIES AND EXPENSES

DETAIL OF PERMANENT POSITIONS

	19 80 actual	19 80 estimate	19 80 estimate
	Supplemental Request Pending	Proposed Amendment	Revised Request
Executive Level IV..............................	1	---	1
ES-6..	1	---	1
ES-4..	1	---	1
ES-3..	1	---	1
ES-1..	1	---	1
Subtotal.......................................	5	---	5
GS/GM-15......................................	6	1	7
GS/GM-14......................................	13	---	13
GS/GM-13......................................	16	1	17
GS-12..	4	2	6
GS-11..	11	---	11
GS-10..	2	---	2
GS-9..	8	---	8
GS-7..	4	1	5
GS-6..	12	---	12
GS-5..	7	2	9
GS-4..	4	1	5
GS-3..	1	---	1
Total permanent positions	93	8	101
Unfilled positions, end of year...............	0	0	0
Total permanent employment, end of year..	93	8	101

1980 AMENDMENT PROPOSED LEGISLATION

SELECTIVE SERVICE SYSTEM
SALARIES AND EXPENSES

SUPPLEMENTARY SOURCE DOCUMENT (In thousands of dollars)

Identification code 90-0400-4-1-054	Function	Line No.	Def. (D) Indef. (I)	Leg. (R) Nonleg. (N)	19 actual	1980 estimate	19 estimate
A. ANALYSIS OF BUDGET AUTHORITY AND OUTLAYS						Revised Request	
Budget authority	054	40.00	D	N		21,895	
Total						21,895	
Outlays	054	90.00				20,895	
Total						20,895	
Memorandum entries: Appropriation to liquidate contract authority							
Limitations:		9 9 9 9			NOT APPLICABLE		

SF-104

STANDARD FORM 307
June 1974 (Revised), Office of
Management and Budget
Circular No. A-11 Revised

1980 AMENDMENT PROPOSED LEGISLATION
SELECTIVE SERVICE SYSTEM
SALARIES AND EXPENSES
SUPPLEMENTARY SOURCE DOCUMENT (in thousands of dollars)

Identification code	19 actual	19 80 estimate	19 estimate
90-0400-4-1-054			

B. DISTRIBUTION OF OUTLAYS

	Line code		Revised Request	
From new authority—current	311		20,895	
From new authority—permanent	312			
From obligated balances	313			
From unobligated balances	314			
From new appropriations to liquidate contract authority (memo entry)	315	( )	( )	( )

C. CHARACTER CLASSIFICATION

	Function	MC	Character code			
Budget authority	054	1	3800-04		21,895	
		1				
		1				
		1				
		1				
		1				
		1				
Total					21,895	
Outlays	054	2	3800-04		20,895	
		2				
		2				
		2				
		2				
		2				
		2				
Total					20,895	

GPO : 1974 O - 535-067

STANDARD FORM 300
July 1964, Bureau of the Budget
Circular No. A-11, Revised.
300-101

1981 Budget Amendment

SELECTIVE SERVICE SYSTEM
SALARIES AND EXPENSES

Program and Financing (in thousands of dollars)

Identification code 90-0400-0-1-054	19 81 actual	19 81 estimate	19 81 estimate
	Request Pending	Proposed Amendment	Revised Request
Program by Activities:			
1. Mobilization Readiness...........	7,469	24,500	31,969
2. Reserve Program..................	3,513	---	3,513
Total programs costs, funded 1/	10,982	24,500	35,482
Change in selected resources (undelivered orders)...............	---	---	---
10.00 Total obligations............	10,982	24,500	35,482
Financing:			
Budget Authority			
40.00 Appropriation................	10,982	24,500	35,482

STANDARD FORM 300
July 1964, Bureau of the Budget
Circular No. A-11, Revised.
300-101

1981 Budget Amendment

SELECTIVE SERVICE SYSTEM
SALARIES AND EXPENSES

Program and Financing (in thousands of dollars)

Identification code 90-0400-0-1-054	19 81 actual Request Pending	19 81 estimate Proposed Amendment	19 81 estimate Revised Request
Relation of obligations to outlays:			
71.00 Obligations incurred, net......	10,982	24,500	35,482
72.40 Obligated balance, start of year........................	2,800	---	2,800
74.40 Obligated balance, end of year........................	-3,000	-2,000	-5,000
90.00 Outlays, excluding pay raise supplemental.................	10,705	22,500	33,205
91.20 Outlays from civilian pay raise supplemental...........	10	---	10
91.30 Outlays from military pay raise supplemental...........	67	---	67

1/ Includes capital investment as follows:
Request pending, $700 thousand.
Proposed amendment, $4,250 thousand.
Revised request, $4,950 thousand.

STANDARD FORM 304
May 1960, Bureau of the Budget
Circular No. A-11, Revised
304-103

1981 Budget Amendment
SELECTIVE SERVICE SYSTEM
SALARIES AND EXPENSES
OBJECT CLASSIFICATION (in thousands of dollars)

Identification code 90-0400-0-1-054	19 81 actual	19 81 estimate	19 81 estimate
	Request Pending	Proposed Amendment	Revised Request
Personnel compensation:			
11.1 Permanent positions	2,412	1,858	4,270
11.3 Positions other than permanent	40	750	790
11.5 Other personnel compensation	---	20	20
11.8 Special personal services payments	4,288	50	4,338
Total personnel compensation	6,740	2,678	9,418
Personnel benefits:			
12.1 Civilian	332	211	543
~~13.0 Benefits for former personnel~~			
21.0 Travel and transportation of persons	200	1,773	1,973
22.0 Transportation of things	10	---	10
23.1 Standard level user charges-----	260	-60	200
~~23.0 Rent, communications, and utilities~~			
23.2 Comm.,Utilities & other rent----	359	1,910	2,269
24.0 Printing and reproduction	180	520	700
25.0 Other services	2,109	13,159	15,268
26.0 Supplies and materials	57	58	115
31.0 Equipment	735	4,251	4,986
~~32.0 Lands and structures~~			
~~33.0 Investments and loans~~			
~~41.0 Grants, subsidies, and contributions~~			
~~42.0 Insurance claims and indemnities~~			
~~43.0 Interest and dividends~~			
~~44.0 Refunds~~			
99.0 Total obligations, costs	10,982	24,500	35,482

STANDARD FORM 300
July 1964, Bureau of the Budget
Circular No. A-11, Revised.

1981 Budget Amendment

SELECTIVE SERVICE SYSTEM
SALARIES AND EXPENSES

PERSONNEL SUMMARY

Identification code 90-0400-0-1-054	19 81 actual	19 81 estimate	19 81 estimate
	Request Pending	Proposed Amendment	Revised Request
Total number of permanent positions..	93	189	282
Total compensable workyears..........	96	177	273
Full-time equivalent of other positions..........................	(3)	(26)	(29)
Full-time equivalent of overtime and holiday hours......................	---	(1)	(1)
Average ES salary....................	$50,112	$50,112	$50,112
Average GS grade.....................	10.17	5.06	6.68
Average GS salary....................	$27,497	$11,612	$16,116

STANDARD FORM 306
July 1949, Bureau of the Budget
Circular No. A-11, Revised.
[illegible]

1981 Budget Amendment

SELECTIVE SERVICE SYSTEM
SALARIES AND EXPENSES

DETAIL OF PERMANENT POSITIONS

	1981 actual	1981 estimate	1981 estimate
	Request Pending	Proposed Amendment	Revised Request
Executive Level IV	1	1	1
ES-6	1	1	1
ES-4	1	1	1
ES-3	1	1	1
ES-1	1	1	1
Subtotal	5	---	5
GS/GM-15	6	1	7
GS/GM-14	13	---	13
GS/GM-13	16	1	17
GS-12	4	12	16
GS-11	11	12	23
GS-10	2	---	2
GS-9	8	2	10
GS-7	4	6	10
GS-6	12	14	26
GS-5	7	9	16
GS-4	4	67	71
GS-3	1	65	66
Total permanent positions	93	189	282
Unfilled positions, end of year	0	3	3
Total permanent employment, end of year	93	186	279

1981 Budget Amendment

SELECTIVE SERVICE SYSTEM
SALARIES AND EXPENSES

SUPPLEMENTARY SOURCE DOCUMENT (In thousands of dollars)

Identification code 90-0400-0-1-054	Function	Line No.	Def. (D) Indef. (I)	Leg. (S) Nonleg. (N)	19 actual	19 estimate	1981 estimate
A. ANALYSIS OF BUDGET AUTHORITY AND OUTLAYS							Revised Request
Budget authority	054	40.00	D	N			35,482
Total							35,482
Outlays	054 054 054	90.00 91.20 91.30					33,205 10 67
Total							33,282
Memorandum entries: Appropriation to liquidate contract authority							
Limitations:		9 9 9 9			NOT APPLICABLE		

307-104

STANDARD FORM 307
June 1974 (Revised), Office of Management and Budget
Circular No. A-11 Revised

1981 Budget Amendment
SELECTIVE SERVICE SYSTEM
SALARIES AND EXPENSES
SUPPLEMENTARY SOURCE DOCUMENT (in thousands of dollars)

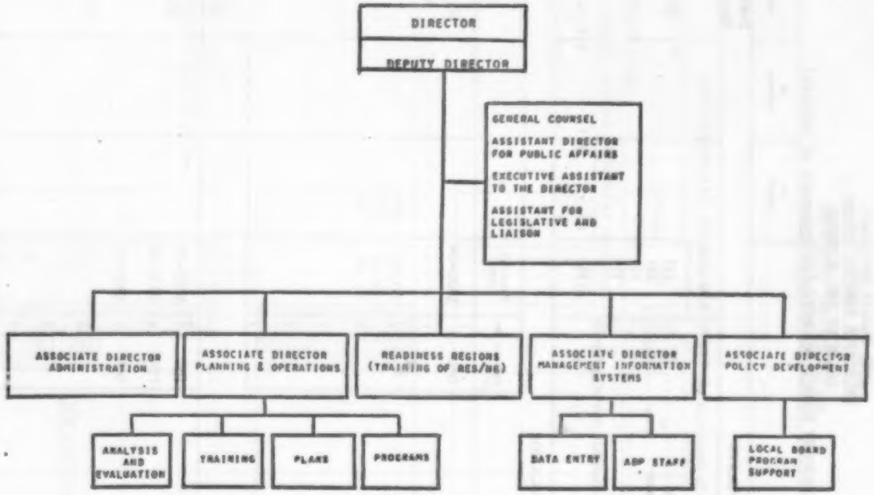
Identification code		19 actual	19 estimate	1981 estimate
B. DISTRIBUTION OF OUTLAYS				Revised Request
	Line code			
From new authority—current	311			30,482
From new authority—permanent	312			
From obligated balances	313			2,800
From unobligated balances	314			
From new appropriations to liquidate contract authority (memo entry)	315	( )	( )	( )

C. CHARACTER CLASSIFICATION

	Function	MC	Character code			
Budget authority	054	1	3800-04			35,482
		1				
		1				
		1				
		1				
		1				
		1				
Total						35,482
Outlays	054	2	3800-04			33,205
	054	2	3800-04			10
	054	2	3800-04			67
		2				
		2				
		2				
		2				
Total						33,282

GPO : 1974 O - 535-067

SELECTIVE SERVICE SYSTEM

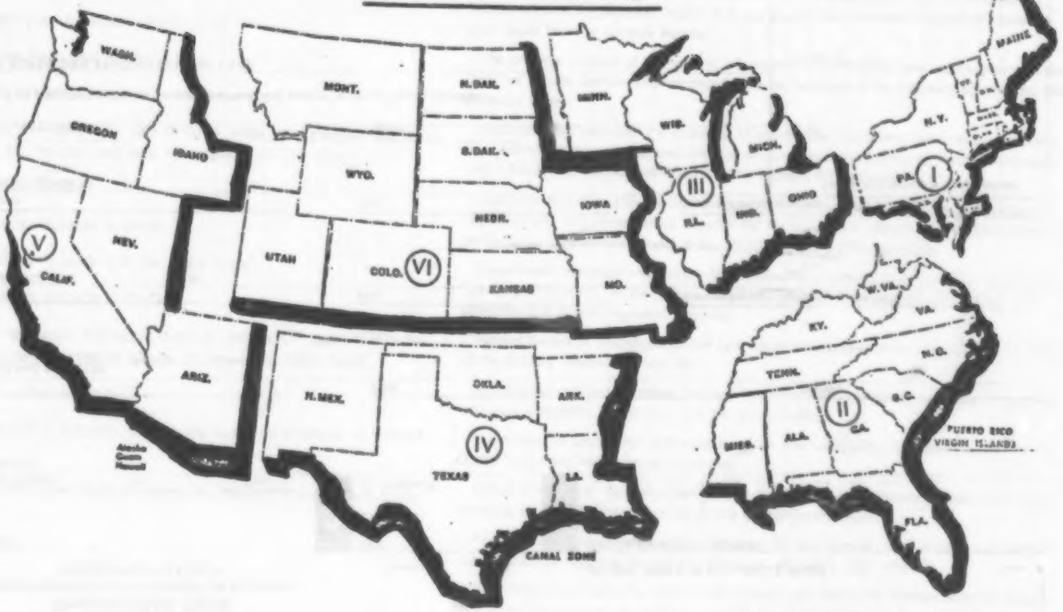

DIRECTOR
DEPUTY DIRECTOR
GENERAL COUNSEL
ASSISTANT DIRECTOR FOR PUBLIC AFFAIRS
EXECUTIVE ASSISTANT TO THE DIRECTOR
ASSISTANT FOR LEGISLATIVE AND LIAISON
ASSOCIATE DIRECTOR ADMINISTRATION
ASSOCIATE DIRECTOR PLANNING & OPERATIONS
READINESS REGIONS (TRAINING OF RES/NG)
ASSOCIATE DIRECTOR MANAGEMENT INFORMATION SYSTEMS
ASSOCIATE DIRECTOR POLICY DEVELOPMENT
ANALYSIS AND EVALUATION
TRAINING
PLANS
PROGRAMS
DATA ENTRY
ADP STAFF
LOCAL BOARD PROGRAM SUPPORT

Bernard Rostker

Bernard Rostker, Director

February 11, 1980

SELECTIVE SERVICE SYSTEM
READINESS REGIONS


WASH.
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MINN.
WIS.
MICH.
MAINE
N.Y.
WYO.
S.DAK.
IOWA
III
ILL.
IND.
OHIO
PA.
I
V
NEV.
CALIF.
UTAH
COLO.
VI
NEBR.
KANSAS
MO.
W.VA.
VA.
KY.
N.C.
TENN.
S.C.
II
GA.
ALA.
MISS.
FLA.
PUERTO RICO
VIRGIN ISLANDS
ARIZ.
Alaska
Guam
Hawaii
N.MEX.
OKLA.
ARK.
IV
TEXAS
LA.
CANAL ZONE

February 1, 1980

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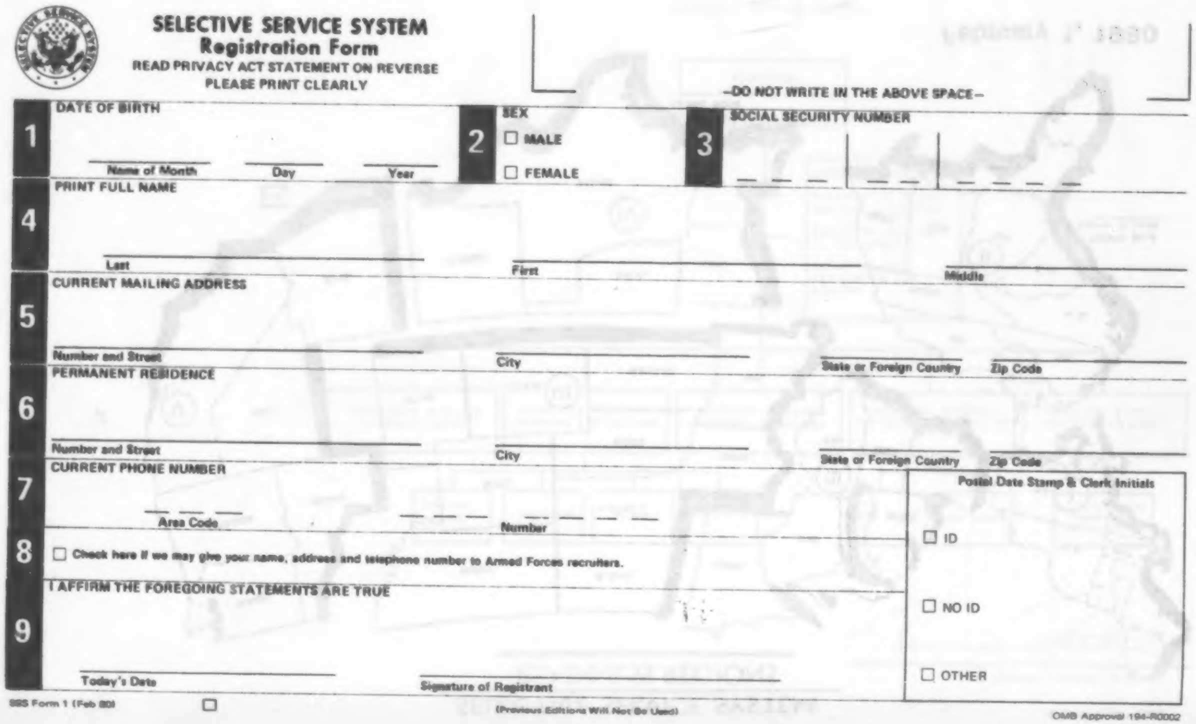

SELECTIVE SERVICE SYSTEM
Registration Form
READ PRIVACY ACT STATEMENT ON REVERSE
PLEASE PRINT CLEARLY

–DO NOT WRITE IN THE ABOVE SPACE–

1 DATE OF BIRTH
Name of Month Day Year

2 SEX
☐ MALE
☐ FEMALE

3 SOCIAL SECURITY NUMBER
_ _ _ | _ _ | _ _ _ _

4 PRINT FULL NAME
Last First Middle

5 CURRENT MAILING ADDRESS
Number and Street City State or Foreign Country Zip Code

6 PERMANENT RESIDENCE
Number and Street City State or Foreign Country Zip Code

7 CURRENT PHONE NUMBER
_ _ _ Area Code _ _ _ _ _ _ _ Number

8 ☐ Check here if we may give your name, address and telephone number to Armed Forces recruiters.

9 I AFFIRM THE FOREGOING STATEMENTS ARE TRUE
Today's Date Signature of Registrant

Postal Date Stamp & Clerk Initials
☐ ID
☐ NO ID
☐ OTHER

SSS Form 1 (Feb 80) ☐ (Previous Editions Will Not Be Used) OMB Approval 194-R0002

HOW TO COMPLETE THIS FORM

- Read the Privacy Act Statement.
- Print all entries except your signature clearly in ink.
- Do not sign or date the form until asked to do so.
- Complete Blocks 1 thru 8 and take your form to the clerk.
- Print your date of birth in Block 1. Use a three letter abbreviation for the month and numerals for the day and year (Example: OCT 29 1960).
- Check the correct box in Block 2.
- Print your Social Security Number in Block 3.
- Print your full legal name in Block 4 in the order listed.
- Print your current mailing address in Block 5.
- Print your permanent residence address in Block 6, include ZIP code. If it is the same as your current mailing address (Block 5), leave this block blank.
- Print your telephone number in Block 7.
- Check the box in Block 8 if we may furnish the listed information to Armed Forces Recruiters.
- When you have completed your form to this point, recheck it and take it to the clerk.

PRIVACY ACT STATEMENT

The Military Selective Service Act, Selective Service Regulations, and the President's Proclamation on Registration require that you provide the indicated information, including your Social Security Account Number.

The principal purpose of the required information is to establish your registration with the Selective Service System. This information may be furnished to the following agencies for the purposes stated:

Department of Defense—for exchange of information concerning registration, classification, enlistment, examination and induction of individuals, availability of Standby Reservists, and if Block 8 is checked, identification of prospects for recruiting.

Alternate service employers—for exchange of information with employers regarding a registrant who is a conscientious objector for the purpose of placement and supervision of performance of alternate service in lieu of induction into military service.

Department of Justice—for review and processing of suspected violations of the Military Selective Service Act, or for perjury, and for defense of a civil action arising from administrative processing under such Act.

Federal Bureau of Investigation—for location of an individual when suspected of violation of the Military Selective Service Act.

Immigration and Naturalization Service—to provide information for use in determining an individual's eligibility for re-entry into the United States.

Department of State—for determination of an alien's eligibility for possible entry into the United States and United States citizenship.

Office of Veterans' Reemployment Rights, United States Department of Labor—to assist veterans in need of information concerning reemployment rights.

General Public—Registrant's Name, Selective Service Number, Date of Birth and Classification, Military Selective Service Act Section 6, 50 U.S.C. App. 456.

Your failure to provide the required information may violate the Military Selective Service Act. Conviction of such violation may result in imprisonment for not more than five years or a fine of not more than $10,000 or both imprisonment and fine.

APPENDIX 3—SUPPLEMENTAL MATERIALS

1. MILITARY AND CIVILIAN CONSCRIPTION: CONSTITUTIONAL ISSUES

(George A. Costello, Legislative Attorney, American Law Division)

INTRODUCTION

Dissatisfaction with the "volunteer army" has led to several proposals to reinstitute one form or another of compulsory military service, or at least to reinstitute registration in order to facilitate conscription if that is later deemed necessary. Some of the proposals would also include civilian service options as alternatives to military service. Once again, not surprisingly, questions are being raised about the constitutionality of conscription for military and/or for civilian purposes. This report will attempt to analyze some of the more important constitutional issues which may be raised by such conscription proposals. Among these issues are whether Congress has the power to conscript for military purposes, and, if it does, whether this power is dependent in any way upon a formal declaration of war or the existence of hostilities directed against the nation; whether Congress has the power to conscript for non-military purposes; and, assuming Congress has power to conscript for the military but lacks power to conscript solely for civilian purposes, the extent to which a military conscription program can channel or direct manpower into civilian programs.

This report is not intended to address procedural due process or other constitutional questions which may be occasioned by the particular procedures authorized or precluded by an actual conscription statute; instead, the focus is on congressional power to conscript.

This report does not address the issue of whether there is any constitutional requirement that conscription apply to women as well as to men. For discussion of that issue, see Congressional Research Service report "A Legal Analysis of the Constitutionality of Excluding Women from Registration and Classification Procedures under the Selective Service Act," Karen J. Lewis, American law Division, June 14, 1979.

CONSTITUTIONALITY OF MILITARY CONSCRIPTION—THE SELECTIVE DRAFT LAW CASES

The power of Congress to raise an army by conscription was upheld in the *Selective Draft Law Cases.*[1] In this decision the Supreme Court unanimously upheld convictions of individuals who failed to register under the Selective Draft Law of 1917,[2] a measure enacted to provide manpower for the World War I army. Although the opinion of the Court written by Chief Justice White found some questions too frivolous, or their answers too obvious, to merit any analysis, the decision is frequently referred to as having conclusively settled the issues raised, and remains the only opinion in which the Supreme Court has purported to explain why military conscription is constitutional. Because this opinion in the "Selective Draft Law Cases" remains as practically the sole guidance from the Court,[3] the opinion will be summarized in some detail.[4]

The Court began its analysis by reciting the powers conferred upon Congress to declare war, to raise and support armies, to make rules for the government and regulation of the land and naval forces, and "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers."[5] There followed immediately the Court's conclusion:

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[1] 245 U.S. 366 (1977). The decision is also occasionally referred to by the name of one of the consolidated cases, *Arver* v. *United States*.

[2] Act of May 18, 1917, ch. 15, 40 Stat. 76.

[3] In *United States* v. *O'Brien*, 391 U.S. 367, 377, (1968), the Court, citing the Selective Draft Law Cases, termed Congress' power "to classify and conscript manpower for military service 'beyond question.' "

[4] The opinion is analyzed in far greater detail in a highly critical law review article. L. Friedman, Conscription and the Constitution: The Original Understanding, 67 Mich. L. Rev. 1493 (1969). This article was based on a study undertaken for the American Civil Liberties Union "to show that the Military Selective Service Act of 1967 is unconstitutional." Id. at 1493. For a rebuttal position, see (in addition to the Selective Draft Law Cases) M. Malbin, Conscription, the Constitution, and the Framers: An Historical Analysis, 40 Fordham L. Rev. 805 (1972).

[5] Art. I, Sec. 8, clauses 11, 12, 14, and 18, respectively. The first three, along with clause 13 (omitted by ellipses in the Court's reference)—the power "to provide and maintain a navy",—are known collectively as the war powers. Clause 18 is commonly referred to as the "necessary and proper clause."

"As the mind cannot conceive an army without the men to compose it, on the face of the constitution the objection that it does not give power to provide for such men would seem too frivolous for further notice."[6]

To argue that "the right to provide" may be satisfied by calling for volunteer enlistments but not by conscription merely "challenges the existence of all power, for a governmental power which has no sanction to it and which therefore can only be exercised provided the citizen consents to its exertion is in no substantial sense a power."[7] The argument that the power to raise armies should be read in the context of a Constitution which created a "free government" and contained "great guarantees . . . as to individual liberty" was dismissed by the declaration that undoubtedly "the very conception of a just government and its duty to the citizen includes the reciprocal obligation . . . to render military service in cases of need and the right to compel it."[8]

However, the Court did go on to consider various aspects of the "frivolous" arguments, and to review selected aspects of this nation's and other nations' military history, in order to illustrate the soundness of its conclusion.

A major thrust of the argument that Congress lacks power to conscript manpower for an army was that the power to raise an army must be considered in relation to the militia clauses,[9] and the intent of the framers with respect thereto. Under this argument, detailed in the Friedman article expressing the ACLU position,[10] it was assumed that the existing state conscription for the militia could continue, that Congress by calling forth the militia could utilize this conscripted manpower, but only for the purposes enumerated in clause 15 ("to execute the laws of the Union, suppress insurrection, and repel invasions"), and that the smaller standing army necessary for emergency situations would be filled by enlistments. No such limitation on the power to raise an army was expressly written into the Constitution, however, and the Court viewed the militia clauses as merely "diminish(ing) the occasion for the exertion by Congress of its military power," and not as limiting the power itself.[11]

This conclusion about the relation between the army and militia powers was reached with scant reference to the intent of the framers as revealed in the records of the constitutional convention, the records of the ratifying conventions in the states, the "Federalist Papers," or other contemporaneous sources. The primary reference to the framing of the Constitution was the following observation by the Court:

"One of the recognized necessities for its adoption was the want of power in Congress [under the Articles of Confederation] to raise an army and the dependence upon the States for their quotas. In supplying the power it was manifestly intended to give it all and leave none to the States."[12]

Closer examination of the records of the convention and other contemporaneous sources can lead to divergent conclusions as to the actual understanding about conscription. The ACLU position, as reflected in the Friedman article,[13] is that "the idea of a direct draft of citizens into the national military was rejected on the very first day of the convention as a matter too impossible to consider," and the power actually conferred was "the unlimited authority to use federal funds to enlist an army." To another author it seems just as obvious that "the framers clearly indicated an intention to leave Congress with broad discretionary powers to raise armies as circumstances might dictate . . . [and] circumstances may occasionally call for conscription."[14]

Before looking more closely at these opposing interpretations it might he well to place in perspective the importance of constitutional analysis of the "intent of the framers" and/or the ratifying states. In his opinion for the Court in the *Dartmouth College* case, Chief Justice John Marshall answered in the following manner a contention that the framers had not anticipated the construction of the contracts clause being urged on the Court:

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[6] 245 U.S. at 377.

[7] Id. at 378.

[8] Id.

[9] Art. I. Sec. 8, cl. 15, 16.

[10] Supra n. 4. The argument also anpears in Freeman, The Constitutionality of Direct Federal Military Conscription. 46 Indiana L.J. 333 (1971).

[11] 245 U.S. at 383. The Court added that:

". . . (B)ecause under the express regulations the power was given to all [the militia] for specified purposes without exerting the army power, it cannot follow that the latter power when exerted was not complete to the extent of its exertion, and dominant."

[12] 245 U.S. at 381.

[13] Friedman, supra n. 4, at pp. 1514, 1516.

[14] Malbin, supra n. 4, p. 815.

"It is more than possible, that the preservation of rights of this description was not particularly in view of the framers of the constitution, when the clause under consideration was introduced into that instrument. It is probable, that interferences of more frequent occurrence, to which the temptation was stronger, and of which the mischief was more extensive, constituted the great motive for imposing this restriction on the state legislatures. But although a particular and a rare case may not, in itself, be of sufficient magnitude to induce a rule, yet it must be governed by the rule, when established, unless some plain and strong reason for excluding it can be given. It is not enough to say, that this particular case was not in the mind of the convention, when the article was framed, nor of the American people, when it was adopted. It is necessary to go further, and to say that, had this particular case been suggested, the language would have been so varied, as to exclude it, or it would have been made a special exception. The case being within the words of the rule, must be within its operation likewise, unless there be something in the literal construction so obviously absurd or mischievous, or repugnant to the general spirit of the instrument, as to justify those who expound the constitution in making it an exception." [15]

The Friedman/ACLU argument seems to be that although conscription was known to the convention, principally through its use by the states in raising a militia, no one thought the adopted language would permit conscription for the national army, and hence no attempt was made to exclude it as a permissible means to effectuate the "raise and support armies" power. Seemingly, moreover, Friedman would go further and argue that had this particular interpretation been suggested, the language would have been so varied as to exclude it. Malbin, on the other hand, argues that the framers, aware as they were of the practice of conscription, intentionally chose broad language giving Congress discretion in the matter, and would not have restricted the language so as to exclude conscription if the precise issue had been raised.

The only express mention of a draft came on the first day of the convention, when Edmund Randolph of Virginia was detailing the deficiencies of the government under the Articles of Confederation. Among the serious defects perceived was an inability to defend itself, and the need to rely on the states to supply either militia or funds with which to pay enlistments. One observer recorded the Randolph speech in the following manner:

"What reason to expect that the treasury will be better filled in the future, or that money can be obtained under the present powers of Congress to suport a war. Volunteers not to be depended on for such a purpose. Militia difficult to be collected and almost impossible to be kept in the field. Draughts stretch the strings of government too violently to be adopted. Nothing short of a regular military force will answer the end of war, and this only to be created and supported by money." [16]

This is the passage which led Friedman to conclude, *supra*, that the idea of a national draft was rejected as unthinkable. Malbin, on the other hand, read it as referring merely to a draft of a nationalized militia, and not to a regular army draft.[17] In this latter interpretation, Randolph's speech demonstrates further that "the framers were aware of the principle of . . . conscription," and thought a standing army to be a necessary evil.[18]

Another important aspect of the Convention's consideration of clause 12 was rejection of a proposal by Elbridge Gerry of Massachusetts to limit the peacetime army to a specific number of troops—two or three thousand. Instead, the fear of standing armies was assuaged somewhat by insertion of the language limiting to a term of two years the use of money appropriated for the army. Again, different interpretations can be placed on these actions. To Friedman, "the historic fears of a standing army led the delegates to limit the power at what they considered its source—by restricting the funds available. . . ." [19] To Malbin, "the key fact to note about standing armies is that the Convention refused to deny Congress the discretionary power to raise them." [20]

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[15] *Darmouth College* v. *Woodward*, 15 U.S. (4 Wheat.) 518, 644 (1819).

[16] I Records of the Federal Convention 25 (M. Farrand ed. 1937) (notes of James McHenry).

[17] Malbin, supra n. 4, p. 8.

[18] Id., pp. 811–12.

[19] Friedman, supra, p. 1516.

[20] Malbin, p. 814.

Similar considerations were apparently weighed by the Convention in deciding how to allocate between federal and state governments control over the militia. Friedman suggests that the difference between the term "army" and the term "militia" was well established in 18th century usage, the former being a relatively small specialized unit serving the central government, the latter being "the whole mass of citizen soldiers, [whose] principal function was to safeguard free men against foreign and domestic enemies—not the least of which was government itself." [21] Such an understanding, coupled with the restriction placed on the purposes for which the militia could be called into federal service, reinforced that author's view that the concept of a draft for the central army was so unthinkable that no delegate's voice (with the exception of Randolph's) was raised against it. To Malbin, on the other hand, these factors merely suggested that the principle of conscription, accepted for the militia, was commonly acknowledged; failure to expressly limit the power to raise armies meant that conscription was to be one permissible means.[22]

As might be expected, the "Federalist Papers" contain elaborations of many of these concerns and selected passages provide some support for both sides of the power-to-conscript argument.[22a] Friedman cites the following passage by Hamilton to contend that there was never any thought that citizens could be "dragged from their occupations and families" by a national army draft:

"These garrisons must either be furnished by occasional detachments from the militia, or by permanent corps in the pay of the government. The first is impractical; and if practicable, would be pernicious. The militia would not long, if at all, submit to be dragged from their occupations and families to perform that most disagreeable duty in times of profound peace. And if they could be prevailed upon, compelled to do it, the increased expense of a frequent rotation of service and the loss of labor, and disconcertion of the industrious pursuits of individuals, would form conclusive objections to the scheme. It would be as burthensome and injuries to the public, as ruinous to private citizens. The latter resource of permanent corps in the pay of governments amounts to a standing army in time of peace; a small one, indeed, but not the less real for being small." [23]

Malbin, on the other hand, emphasies another passage by Hamilton in suggesting that the framers intended not to restrict the means of raising armies.

"The authorities essential to the care of the common defense are these: to raise armies; to build and equip fleets, to prescribe rules for the government of both, to direct their operations, to provide for their support. These powers ought to exist without limitation: Because it is impossible to foresee or to define the extent and variety of national exigencies, or the correspondent extent and variety of the means which may be necessary to satisfy them. The circumstances that endanger the safety of nations are infinite; and for this reason no constitutional shackles can wisely be imposed on the power to which the care of it is committed. The power ought to be coextensive with all the possible combinations of such circumstances; and ought to be under the direction of the same councils, which are appointed to preside over the common defense." [24]

Other passages of the "Federalist Papers," of course, also bear on these issues.[25]

Debates in the various state ratification conventions offer a few other possible insights into how conscription was viewed at the time of the Constitution's adoption. Amendments offered in Maryland and Virginia to protect militia members from subjection to martial law except in times of war or insurrection suggest to Friedman that the sponsors assumed that no one would be drafted into the army and so subjected to martial law; otherwise, the amendments would have applied as well to army draftees.[26] Similarly, a proposal in Pennsylvania that conscientious objectors be permitted to pay others to serve in their stead would have applied only to militia service, and the ACLU-sponsored paper assumes that proponents of this measure would have made it apply to army service as well if they anticipated any possibility of conscription into the army.[27] Also, some fears were expressed in the Virginia convention that the militia might call farmers from their crops at harvest time, and thereby cause devastating losses for those so conscripted, when a relatively "trivial" expense to enlist a modest standing army might obviate the need for army conscription. Again, it is argued that no one voiced any similar fears about army conscription because no one anticipated that it could happen.[28]

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[21] Friedman p. 1520.

[22] Malbin, pp. 881–815.

[22a] "The opinion of the Federalist has always been considered as of great authority. . . . Its intrinsic merit entitles it to this high rank; and the part two of its authors performed in framing the constitution, put it very much in their power to explain the views with which it was framed." *Cohens v. Virginia*, 19 U.S. (6 Wheat.) 264, 418 (1821) (Marshall, C. J.)

[23] The Federalist No. 24, at 156–57 (J. Cooke ed. 1961), as cited in Friedman p. 1521.

[24] The Federalist No. 23, at 147–48, as cited in Friedman, p. 815.

[25] See, principally, Nos. 8, 23, 25, 41, and 46.

[26] It was also assumed that enlistees would knowingly consent to subjection to the military justice system. For elaboration, see Friedman, pp. 1530–32.

After its brief reference to the adoption of the Constitution and its analysis of the relation between the militia and army clauses, the Court's opinion in the "Selective Draft Law Cases" turned to the history of congressional exercise of these powers. This of course confirmed the Court's observation that the two powers had been viewed from the outset as distinct. It also revealed that, although enlistment had been the customary means for raising an army, twice in our nation's history prior to WWI Congress had debated conscription bills, and once, during the Civil War, enacted a law authorizing conscription for army service.

The first proposal for conscription had been submitted by Secretary of War James Monroe during the War of 1812. The Court acknowledged that "opposition developed" in the Congress, but dismissed it as "rest(ing) upon the incompatibility of compulsory military service with free government, a subject which from what we have said has been disposed of."[29] Although each House of Congress ultimately passed a version of the Monroe proposal, peace came before any compromise measure was agreed to, and consequently no conscription statute was enacted during the War of 1812.[30]

The lone precedent for the World War I conscription statute was thus the Civil War Enrollment Act.[31] Under this Act, which permitted a draftee to hire a substitute or, until amendment,[32] to purchase commutation, four separate draft calls were made. Approximately, 46.000 of the 249.000 called actually served; of the remaining 203.000 called, 116,000 hired substitutes and 87,000 purchased commutation.[33] The act also led to the lone judicial precedent available for the 1917 Court's consideration. In *Kneedler* v. *Lane*,[34] the Pennsylvania Supreme Court first held the enrollment act unconstitutional in deciding to grant a preliminary injunction against its enforcement, and then, following a change in the court's membership, upheld the law and voted to dissolve the injunction. The vote was 3 to 2 in each instance, so that the 6 judges who considered the constitutionality of the act split 3–3. The important decision, of course, was the later one dissolving the injunction; it was this decision which the Supreme Court cited in the *Selective Draft Law Cases* as upholding the validity of the draft "for reasons not different from those which control our judgment."[35]

The two decisions of the Pennsylvania court in *Kneedler* v. *Lane* elicited nine separate opinions. Perhaps most important for its constitutional analysis was that of Judge Strong dissenting to the initial decision to issue a preliminary

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[27] Friedman, p. 1532–33. A conscientious objector clause was also coupled with what became the Second Amendment in a draft presented to the First Congress by James Madison. The clause, of course, was later dropped. Malbin suggests that it is just as reasonable to infer that Madison wished to afford the possibility of conscientious objector status to militia draftees but not to army draftees as it is to infer that he would have made the language applicable to the latter group if he believed conscription into the army possible under the Constitution. Malbin, pp. 818–820.

[28] Friedman, p. 1534.

[29] 245 U.S. at 385.

[30] Malbin emphasizes the importance of both Houses passing a conscription measure (p. 821); Friedman emphasizes that much of the opposition was based on constitutional grounds and that no measure was enacted (p. 1541).

[31] Act of March 3, 1863, ch. 75, 12 Stat. 731. Arguably, the Act was not precedent for army conscription for purposes beyond the constitutional reach of a militia call, since the Civil War might be considered to have been an "insurrection" within the meaning of the militia clause. In fact, some Civil War resort to the militia had been attempted prior to the 1863 army draft. See Wiener, "The Militia Clause of the Constitution," 54 Harvard L. Rev. 181, 190–191 (1940).

[32] By the act of July 4, 1864, ch. 237, 13 Stat. 379, the authorization for a commutation fee was dropped.

[33] R. Weigley, History of the United States Army 210 (1967), as cited in Friedman, p. 1546.

[34] 45 Pa. 238 (1863).

[35] 245 U.S. at 388.

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injunction against enforcing the conscription law.[56] When the court later decided to dissolve the injunction and uphold the law's constitutionality, Judge Strong's opinion for the court concentrated more on rebutting arguments that the court should be bound by its earlier preliminary decision than on the constitutional issues. Central to Judge Strong's first opinion was his characterization of the power to raise armies as being "unrestricted, unless it be considered a restriction that appropriations . . . were forbidden for a longer term than two years."[57] This followed as well from a more general principle:

"The powers of the federal government are limited in number, not in their nature. A power vested in Congress is as ample as it would be if possessed by any other legislature . . . Because the federal government has not all the powers which a state government has, will it be contended that it cannot borrow money, or regulate commerce, or fix a standard of weights and measures, in the same way, by the same means, and to the same extent as any state might have done had no federal constitution ever been formed? If not, and surely this will not be contended, why is not the federal power to raise armies, as large and as unfettered in the mode in which it may be exercised, as was the power to raise armies possessed by the states before 1787. . . . If they were not restricted to voluntary enlistments in procuring a military force, upon what principle can Congress be?"[58]

What was deemed by Judge Strong "the argument most pressed" against the conscription law's constitutionality was that it could result in interference with a state's control over its militia. Army draftees would necessarily come from a state's militia, consisting as it did of all able-bodied men; the power to take some, it was contended, was the power to take all. The answers, to Judge Strong, were two. The first was that the militia clause itself gave Congress considerable control over a state's militia. Secondly, the judge concluded that the power to enlist was potentially as damaging to a state's militia pool as the power to conscript, since presumably all enlistees as well as all draftees would be members of a militia.

Chief Justice White's opinion in the "Selective Draft Law Cases" also cited as further evidence of the correctness of its interpretation the fact that courts of six of the Confederate states had upheld a conscription measure based on identical language in the constitution of the Confederacy.[58a]

The final portion of the Court's opinion dismissed various arguments asserting that the Constitution prohibits use of conscription as a means to raise an army. Among these was an argument that military conscription constitutes involuntary servitude in violation of the Thirteenth Amendment. This was dealt with summarily with the following language.

"Finally, as we are unable to conceive upon what theory the exaction by government from the citizen of the performance of his supreme and noble duty of contributing to the defense of the rights and honor of the nation, as the result of a war declared by the great representative body of the people, can be said to be the imposition of involuntary servitude in violation of the prohibitions of the Thirteenth Amendment, we are constrained to the conclusion that the contention to that effect is precluded by its mere statement."[59]

The Thirteenth Amendment provides that "(n)either slavery nor involuntary servitude, except as punishment for crime whereof the party shall have been duly convicted, shall exist within the United States or any place subject to their jurisdiction." The language of the Amendment was taken from a similar clause in the Northwest Ordinance of 1787; the Amendment was ratified in 1865.

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[56] The Strong opinion is important due to the ultimate disposition of the case. The principal opinion against the act's constitutionally was probably ha of Chief Judge Lowrie, whose retirement and replacement by a Judge Agnew accounted for the changed vote when the matter was considered anew for final disposition. The Chief Judge in his opinion pointed out that although the Civil War provided occasion for resort to the militia clause to suppress insurrection, the law in question did not rest on an assertion or exercise of that power, and thus had to stand or fall as an exercise of the power to raise armies. Neglect of the militia power suggested that conscription was not a necessary and proper means, under the circumstances, of raising an army. The Constitution's distinction between a milita force and an army suggested to the Chief Judge that the army power was not intended to completely eviscerate the protections to citizens and states embodied in the militia clause.

[57] 45 Pa. at 276.

[58] 45 Pa. at 277.

[58a] For an account of the Confederate conscription statutes and the legal challenges to them, see Shaw, The Confederate Conscription and Exemption Acts. 6 Am. J. Legal Hist. 368 (1962).

[59] 247 U.S. at 390.

A year before the Selective Draft Law Cases the Court had by dictum indicated what the answer would be to a contention that military conscription contravenes the Thirteenth Amendment. In *Butler* v. *Perry*, 240 U.S. 328 (1916), the Court upheld against Thirteenth Amendment challenge a state law requiring able-bodied men to work on the public roads of their county for six days of the year, or hire a substitute or instead pay a tax. In an opinion not relying on the substitution and tax alternatives provided by the statute, the Court characterized the road duty as among those obligations of citizens to government not covered by the Amendment proscription.

"[The Amendment] introduced no novel doctrine with respect to services always treated as exceptional, and certainly was not intended to interdict enforcement of those duties which individuals owe to the State, such as services in the army, militia, on the jury, etc. The great purpose in view was liberty under the protection of effective government, not the destruction of the latter by depriving it of essential powers."[40]

The Court pointed to a long history of laws requiring such road work by able-bodied men. Most persuasive was the fact that the states formed from the Northwest Territory had incorporated into their constitutions the prohibition on slavery and involuntary servitude, yet all but one had adopted statutes compelling road work. Also noted by the Court was the fact that by 1889 twenty-seven states had such compulsory road work statutes. Neither in *Butler* v. *Perry* nor in the *Selective Draft Law Cases*, however, did the Court in its consideration of Thirteenth Amendment issues address the fact that there was no such widespread precedent for army (as distinguished from militia) conscription. Adoption of the amendment in 1865 had, of course, followed closely on the heels of the lone precedent for national conscription, the Civil War Enrollment Act, and there is nothing to be found in the record of adoption and ratification to suggest any intent to prohibit conscription.[41]

The Court's dictum in *Butler* v. *Perry* was generally similar to that which had appeared in an earlier decision, *Robertson* v. *Baldwin*, 165 U.S. 275, 282 (1897), in which the Court upheld imposition of criminal sanctions to compel deserting seamen to return to their ships and serve out the terms of their contracts, and in which the Court had determined that the amendment "makes no distinction between a public and a private service." There was, however, one significant difference in the Court's choice of language:

"It is clear, however, that the amendment was not intended to introduce any novel doctrine with respect to certain descriptions of service which have always been treated as exceptional; such as military and naval enlistments, or to disturb the right of parents and guardians to the custody of their minor children or wards." (emphasis added)

This change in wording from "military and naval enlistments" in 1896 to "service in the army [and] militia" in 1916 represented, or at least opened the door for an interpretation that would represent, a major expansion of the concept of "exceptional service" not within the ambit of Thirteenth Amendment protection. Not only could military and naval enlistees be held, just as merchant seamen could be, to service contracts presumably freely entered into; all able-bodied men could also be conscripted into army service, just as by established practice they could be compelled to give or pay for a week's labor on the public roads, and to serve in their state militia.

It was against this backdrop of what was, at least with respect to military service, expanded yet unexplained dictum, that the Court in the *Selective Draft Law Cases* dismissed as "refuted by its mere statement" the assertion that conscription for the army constitutes involuntary servitude prohibited by the Thirteenth Amendment. Whether explained or not, however, the holding seems well settled.

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[40] 240 U.S. at 333. (emphasis added)

[41] See, generally, Hamilton, The Legislative and Judicial History of the Thirteenth Amendment, 9 Nat'l Bar J. 26 (1951); 10 Nat'l Bar J. 1 (1952). The Court has said that while "Negro Slavery alone was in the mind of the Congress which proposed the thirteenth article, it forbids any other kind of slavery, now or hereafter." Slaughter-House Cases, 83 U.S. (16 Wall.) 36, 72 (1873). "Mexican peonage and the Chinese coolie trade" were also mentioned as possible examples. Id. This description of the Amendment must, however, be read in conjunction with the oft-repeated statement that the Amendment was "not intended to introduce any novel doctrine with respect to (certain obligations of citizen to state)." See Robertson v. Baldwin, infra.

PEACETIME MILITARY CONSCRIPTION

As evidenced by the reference in the *Selective Draft Law Cases* to the citizen's "supreme and noble duty of contributing to the defence of the rights and honor of the nation, as the result of a war declared by the great representative body of people," the Supreme Court there upheld a conscription statute enacted after a formal declaration of war. The Court has not yet directly held that military conscription in the absence of a declared war is constitutional. However, lower courts have so held, and Supreme Court decisions interpreting the scope of the war power in other contexts, as well as dictum in a Vietnam-War-era Supreme Court opinion, both strongly suggest that a formal declaration of war is not a constitutional prerequisite to military conscription.

In a 1968 decision upholding a conviction under the selective service law for destroying a draft registration card the Court, in an opinion by Chief Justice Warren, termed the power to raise and support armies "broad and sweeping," and "the power to classify and conscript manpower for military service 'beyond question.' "[62] There was, of course, no declaration of war at the time of the *O'Brien* decision or at any time during the Vietnam conflict. The "beyond question" language came from *Lichter* v. *United States*,[63] in which the Court had upheld application of the Renegotiation Act, first enacted in 1942, to excess profits made in 1942 and 1943, all after war had been declared in 1941. Thus *Lichter* itself involved exercise of the war power after war had been formally declared. The Court in *O'Brien* also cited the *Selective Draft Law Cases*. Justice Douglas, dissenting in *O'Brien*, thought that the issue of "whether conscription is permissible in the absence of a declaration of war" was one "upon which the litigants and the country are entitled to a ruling."[64] The Justice's views on the issue were developed more fully in his dissents to the denial of certiorari in *Holmes* v. *United States*[65] and *Hart* v. *United States*.[66] In *Holmes*, the appeals court had rejected a contention that "peacetime" conscription contravenes the Thirteenth Amendment and cited an earlier appellate decision to the same effect.

"The power of Congress to raise armies and to take effective measures to preserve their efficiency, is not limited by either the Thirteenth Amendment or the absence of a military emergency."[67]

In *Hart*, the brief opinion of the appeals court did not discuss the issue of peacetime conscription.[68]

It is well established that exercise of the war powers is not limited merely to the period of actual hostilities, or to the period for which war has been formally declared. Although more cases seem to have arisen challenging exercise of war powers after the end of hostilities than have arisen challenging preparation for war, there is little question that the war powers comprehend the power to prepare for war. This position was recognized by Justice Story in his Commentaries:

"It is important also to consider that the surest means of avoiding war is to be prepared for it in peace. . . . How could a readines for war in time of peace be safely prohibited, unless we could in like manner prohibit the preparations and establishments of every hostile nation? . . . It will be in vain to oppose constitutional barriers to the impulse of self-preservation."[69]

Standing for the same proposition in *Ashwander* v. *Tennessee Valley Authority*,[70] in which the Supreme Court upheld as an exercise of both war and commerce powers pre-World War I (1916) construction of nitrate plants, a dam, and corresponding hydroelectric power plants, all for the purpose of providing the capability of producting ammonium nitrate for use in explosives. The Court approved as having "ample support" the findings of a lower court that although there was "no intention" to use the facilities for the production of war materials in time of peace, nevertheless, . . .

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[62] *United States* v. *O'Brien*, 391 U.S. 367, 377.

[63] 334 U.S. 742 (1948).

[64] 391 U.S. at 389.

[65] 391 U.S. 936 (1968).

[66] 391 U.S. 956 (1968).

[67] *United States* v. *Holmes*, 387 F.2d 781, 784 (7th Cir. 1968), quoting *Howze* v. *United States* 272 F.2d 1–16, 148 (9th Cir. 1959).

[68] *United States* v. *Hart*, 382 F.2d 1020 (3d Cir. 1967).

[69] 3 J. Story, Commentaries on the Constitution of the United States (Boston, 1833) § 1180.

[70] 297 U.S. 288 (1936).

The maintenance of said properties in operating condition and the assurance of an abundant supply of electric energy in the event of war, constitute national defense assets.[51]

Taking "judicial notice of the international situation" in 1916 when the authorizing legislation was enacted, the court found indisputable the fact "that the Wilson dam and its auxiliary plants . . . are, and were intended to be, adapted to the purpose of national defense."[52]

It is also well established that courts will give great deference to the congressional judgment of what is "necessary and proper" to effectuate the war powers.

"Since the Constitution commits to the Executive and to Congress the exercise of the war power in all the vicissitudes and conditions of warfare, it has necessarily given them wide scope for the exercise of judgment and discretion in determining the nature and extent of the threatened injury or danger and in the selection of the means of resisting it."[53]

And in *Lichter* v. *United States*, the Court, after quoting extensively from a speech by Charles Evans Hughes, concluded that "the primary implication of a war power is that it shall be an effective power to wage the war successfully."[54]

Thus it would seem if Congress has the power of military conscription, that power is probably not limited in its exercise by the prerequisite of a formal declaration of war.

CIVILIAN CONSCRIPTION

There appears to be little constitutional support for an assertion of a federal power to conscript labor for civilian purposes independently of any effectuation of the war powers.

In analyzing whether Congress does have any such power to conscript for civilian work, the starting point must be a recognition that Congress has no powers not delegated to it by the Constitution. In the words of Chief Justice Marshall, "(t)his government is acknowledged by all to be one of enumerated powers."[55] The Tenth Amendment reflects this principle:

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States, respectively, or to the people."

Arguments that congressional power to conscript might derive from clauses other than the war powers seem remote. Nonetheless, it is not inconceivable that an argument might seek to rely upon the "general welfare" clause, on upon the commerce clause.

The "general welfare" clause appears in Art. I, § 8, cl. 1 under the power to tax and spend, and is not itself a grant of power. The power delegated is "to lay and collect taxes, duties, imposts, and excises"; the purpose for which taxes may be levied include spending "to pay the debts and provide for the common defense and general welfare." "The [general welfare] clause, in short, is not an independent grant of power, but a qualification of the taxing power."[56] Because the term general welfare has been interperted broadly as not limiting Congress in its spending to effectuation of the other powers enumerated in Art. I, § 8 (e.g., the power to regulate commerce),[57] the "clause" would appear to provide ample basis for expenditure of revenues to hire persons to work in a civilian labor force.[58] Similarly, the power to tax and spend to provide for the common defense would support expenditures to pay army enlistees. On the other hand, just as there has been no serious suggestion that the power to spend to provide for the common defense would support conscription for that same purpose,[59] so too the argument that spending to provide for the general welfare could comprhend the power to conscript manpower for civilian purposes would seem very strained.

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[51] 297 U.S. at 327–328.

[52] 297 U.S. at 327.

[53] *Hirabayashi* v. *United States*, 329 U.S. 81, 87 (1943).

[54] 334 U.S. at 782.

[55] *McCulloch* v. *Maryland*, 17 U.S. (4 Wheat.) 316, 405 (1819).

[56] Constitution of the United States, Analysis and Interpretation, S. Doc. 92–82 (Congressional Research Service 1973), pp. 136–137.

[57] See *United States* v. *Butler*, 297. U.S. 1, 65–66 (1936): "While, therefore, the power to tax is not unlimited, its confines are set in the clause which confers it, and not in those of § 8 which bestow and define the legislative powers of Congress. It results that the power of Congress to authorise expenditure of public moneys for public purposes is not limited by the direct grants of legislative power found in the Constitution."

[58] For example, expenditure of federal funds for a Civilian Conservation Corps, created to alleviate unemployment and to help conserve natural resources, has been upheld as a valid exercise of Art. I, § 8, cl. 1 power. *United States* v. *Query*, 21 F. Supp. 738 (E.D.S.C. 1937).

The power to regulate interstate commerce is mentioned only because the projects for which civilian labor might be conscripted might well constitute or affect interstate commerce. There is no precedent, however, suggesting that the power to regulate interstate commerce comprehends the power to conscript labor.

If some forms of civilian conscription can be valid as an exercise of congressional power, it is probably as an incidental exercise of the war powers, more specifically as a means "necessary and proper" to effectuate the power to raise armies. Although "the constitutional power to Congress to raise and support armies and to make all laws necessary and proper to that end is broad and sweeping,"[60] and consequently Congress has broad discretion in choosing means to effectuate that power, there may yet be some limits on the extent to which a civilian conscription program could be tied to military conscription. The general principles of interpretation were set forth in the oft-quoted words of Chief Justice Marshall in *McCulloch* v. *Maryland*:

"Let the end be legitimate, let it be within the scope of the Constitution, and all means which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional."[61]

While the Chief Justice made plain that ordinarily courts are not to "inquire into the degree of . . . necessity" giving rise to Congress's choice of "appropriate" means to effectuate a power, the possibility was nonetheless suggested that "Congress, under the pretext of executing its powers (might) pass laws for the accomplishment of objects not entrusted to the government." If a case involving such an assertion of power were to come before the Court, "it would be the painful duty of this tribunal . . . to say that such an act was not the law of the land."[62] Thus, given the constitutionally sanctioned "end" of raising a military force, questions might be raised as to whether a particular civilian conscription plan fashioned by Congress is "plainly adapted to that end," as to whether it is a means "prohibited" by the Thirteenth Amendment, and as to whether it is "consist(ent) with the letter and spirit" of the Thirteenth Amendment and other provisions of the Constitution.[62a] The answers to these questions might vary with the scope and extent of the conscription program, and with the conditions under which Congress sought to impose it. For example, a peacetime conscription under which all young persons in a specified age group are drafted into civilian or military forces might result in a vastly disproportionate number in the civilian work, and a resulting difficulty in showing that the plan is "plainly adapted" to the legitimate end of raising a military army, rather than being an attempt to reach an object "not entrusted to the government" under the "pretext of executing its [entrusted] powers." On the other hand a system under which military needs alone, or military needs coupled with some selection criterion (e.g. individual choice by the draftee, or qualification as a conscientious objector) for allocating draftees between military and civilian work, would seem more readily sustainable as a means plainly adapted to the end of raising an army.

Some indication of what might be considered necessary and proper means of raising an army are present in decided case law. Compulsory civilian service as an alternative to military service for those qualifying as conscientious objectors has been uniformly upheld. Among such decisions is *Howze* v. *United States*:

"Compulsory civilian labor does not stand alone, but is the alternative to compulsory military service. It is not a punishment, but is instead a means of preserving discipline and morale in the armed forces. The power of Congress to raise armies, and to take effective measures to preserve their efficiency, is not limited by either the Thirteenth Amendment, or the absence of military emergency."[63]

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[59] It has been sugegsted, however, that existence in clause 1 of the power to spend to provide for the common defense argues against narrow construction of the clause 12 power to raise and support armies, it being assumed that the framers would not have intended merely to duplicate the clause 1 power in clause 12.

[60] *United States* v. *O'Brien*, supra n. 3, 391 U.S. at 377.

[61] *McCulloch* v. *Maryland*, 17 U.S. (4 Wheat.) 316, 421 (1819).

[62] Id., at 423.

[62a] The last two questions might also be raised, of course, in relation to a military conscription plan, although the Court's opinion in the Selective Draft Law Cases, discussed above, has been taken to have settled the matter. In any event, this discussion of civilian conscription assumes arguendo the validity of conscription for the military.

Under the selective service law at issue in *Howze*, and in effect until recently, conscientious objectors were presumably no more likely to be called for civilian service than they would have been likely to be called for military service absent the CO qualification, since registrants were entitled to the "lowest" classification for which they could qualify, and since all other classifications were considered lower than 1-A (subject to call for military service), 1-O (conscientious objector, subject to call for civilian service), and 1-A-O (conscientious objector, subject to call for noncombatant service with the military).[64] Thus under that system civilian work for conscientious objectors was in a fairly strict sense an "alternative" to military service.

In the challenges to the civilian work requirement for consentious objectors, it has apparently been the fact that civilian work was required as an alternative to military service, and not the criterion (conscientious objection) Congress chose to apply for determining who could qualify for such service, which has been deemed to be of constitutional significance. Whether conscientious objector status is viewed as a matter of legislative grace or as being mandated by the First Amendment,[65] presumably Congress might broaden the civilian service category, even to the point of allowing draftees to choose between civilian and military service, as long as no invidiously discriminatory or improperly based religious test is the measure for qualification.

In considering the desired balance between compulsion and choice necessary to channel the requisite numbers into military rather than civilian service, Congress can be guided by a relatively recent Supreme Court decision upholding denial of veterans benefits to those, including conscientious objectors, who were not "on active duty" while in the service. The Court determined that there was no violation of the equal protection component of the due process clause for Congress to attempt to make military service more attractive than alternative civilian service, since the dangers and disruptions of military service are generally more acute, and since readjustment from military to civilian life may rationally be considered more difficult than changing from compulsory civilian service to free civilian life.[66] This such inducements as better pay scales, and medical and educational benefits, might be offered for those choosing military service over civilian.

The same principles and decisions discussed above in relation to the validity of military conscription under the Thirteenth Amendment are also important to an analysis of the validity of the civilian component of a conscription plan. It may be helpful to consider these precedents in the context of the Court's explanation of the purpose of the Amendment.

"The undoubted aim of the Thirteenth Amendment . . . was not merely to end slavery but to maintain a system of completely free and voluntary labor throughout the United States. Forced labor in some special circumstances may be consistent with the general basic system of free labor. For example, forced labor has been sustained as a means of punishing crime, and there are duties such as work on highways which society may compel. But in general the defense against oppressive hours, pay, working conditions, or treatment is the right to change employers."[67]

This suggests at least two components to a Thirteenth Amendment test: does the challenged plan fall within one of the traditional exceptions of "duties which society may compel," and, if not, does it detract from "a system of completely free and voluntary labor" in such a way as to violate an employee's "right to change employers."

As mentioned above, although the Thirteenth Amendment applies to both public and private service,[68] there are some public services "which have from time immemorial been treated as exceptional," and as "duties which society may compel." These include militia and/or military service, jury duty, and work on the county roads. *Howze* and similar holdings would add to the list alternative civilian service for those exempted from military service. There seems to be little support in the precedents, however, for including among the exceptions federally-compelled civilian service (other than jury duty) not tied to military service. Thus analysis of the validity of a civilian conscription program as an appropriate exercise of power to raise armies would be a first step, at least, in determining its validity under the Thirteenth Amendment.

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[63] *Howze* v. *United States*, 272 F.2d 146, 148 (9th Cir. 1959).

[64] See, e.g., 32 C.F.R. § 1623.2 (1970).

[65] For suggestion that the status is merely a matter of legislative grace, and is not constitutionally required, see *Jacobson* v. *Massachusetts*, 197 U.S. 11, 29, (1905), and United States v. Macintosh, 283 U.S. 605, 623–624 (1931). For a contrasting view, see Welsh v. United States, 398 U.S. 333, 359 (Harlan, J., concurring).

[66] *Johnson* v. *Robison*, 415 U.S. 361 (1974).

[67] *Pollock* v. *Williams*, 322 U.S. 4, 17–18 (1944).

[68] *Robertson* v. *Baldwin*, 165 U.S. 275, 282 (1897).

Among the public duties held to have been excepted from the Thirteenth Amendment's proscription, service on the public roads seems most similar to federal conscription for non-military work. There are, however, several reasons why the *Butler* v. *Perry* exceptions would probably not be extended to cover such conscription. First, of course, it should be noted that the one practice is historically valid and the other is unprecedented. Moreover, the conscription upheld in *Butler* v. *Perry* was by a state, and not by the Federal Government. Since arguably Congress has no authority to conscript independently of its power to raise armies, any power to conscript still surviving under the *Butler* v. *Perry* rationale would reside in the states. Secondly, the duration of road duty required by the state statute in *Butler* v. *Perry* was six days a year, and presumably the civilian service contemplated under a federal proposal would be of at least a year's duration. Whether this major difference in duration would be of constitutional significance is difficult to predict, although of course jury duty can in some instances approach the longer duration. Finally, there is the fact that, although the Court in *Butler* v. *Perry* found no reason to rely on the alternatives available to the draftees, the statute in question nonetheless offered the alternatives of hiring a substitute or paying a tax. Absence of such alternatives could take on added significance as the severity of the liberty deprivation and/or the questionableness of conscription authority increase. Possible due process limitations are discussed below.

State courts have twice upheld forced labor under situations thought to be exigent. A Delaware statute passed during World War I, justified as a war measure in aid of the Federal Government and in exercise of the police power, required all males between 18 and 55, and not in the armed forces or other public employ, to find a "useful or lawful occupation." Those unemployed could be assigned work by a "Council of Defense." The state court, declining comment on what might constitute involuntary servitude in peacetime, upheld the act because of the importance during the war of increasing production, and because of an assumed weakened capacity of the state's police forces to handle vagrants.[69]

A Massachusetts city ordinance passed during the Depression conditioned receipt of family assistance by those otherwise unemployed on performing work for the public works department, and was likewise upheld under a Thirteenth Amendment challenge.[70]

> "In a period of Depression like the present, it is reasonable to require one in the position of the defendant to work under the conditions shown . . . to meet his obligations to his family."

Because these two decisions emphasize the near-emergency conditions under which the laws were enacted, it is unlikely that the rationale could be expanded to apply to peacetime universal conscription. Also, of course, the cases dealt with state police power and not federal power.

It may be possible to construct an argument that the war powers in general, or perhaps the power to support armies, and not only the power to raise armies, might in some circumstances provide authority for federal conscription for non-military jobs. This argument, relying on dictum in *Lichter* v. *United States*, would become stronger as conditions approach total mobilization for full-scale war, and as the compelled civilian work contributes more directly to a war effort. In upholding application of the Renegotiation Act to restrain war profits, the Court in *Lichter* compared this relatively slight imposition on the manufacturer of war goods with the supreme sacrifice demanded of soldiers and termed the congressional power "to support the armed forces with equipment and supplies . . . no less clear and sweeping" than its power to conscript for military service.[71] Later in the opinion of the Court Justice Burton discussed the more "totalitarian" alternative of "conscription of property and workmen."

> "One approach to the question of the constitutional power of Congress over the profits on these contracts is to recognize that Congress, in time of war, unquestionably has the fundamental power, previously discussed, to conscript men and to requisition the properties necessary and proper to enable it to

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[69] *State* v. *McClure*, 7 Boyce (Del.) 265, 105 A.2d. 712 (1919).
[70] *Commonwealth* v. *Pouliot*, 292 Mass. 229, 198 N.E. 256, 257 (1935).
[71] 334 U.S. at 756.

raise and support its Armies. Congress furthermore has a primary obligation to bring about whatever production of war equipment and supplies shall be necessary to win a war. Given this mission Congress then had to choose between possible alternatives for its performance. In the light of the compelling necessity for the immediate production of vast quantities of war goods, the first alternative, all too clearly evident to the world, was that which Congress did not choose, namely, that of mobilizing the productive capacity of the nation into a governmental unit on the totalitarian model. This would have meant the conscription of property and of workmen. It would have meant the raising of supplies for the Armies in much the same manner as that in which Congress raised the manpower for such Armies. Already the nation had some units of production of military supplies in the form of arsenals, navy yards, and in the increasing number of governmentally owned, if not operated, war material plants. The production of the atomic bombs was one example of a war industry owned and operated exclusively by the Government. Faced with this ironical alternative of converting the nation in effect into a totalitarian state in order to preserve itself from totalitarian domination, that alternative was steadfastly rejected. The plan for Renegotiation of Profits which was chosen in its place by Congress appears in its true light as the very symbol of a free people united in reaching unequalled productive capacity and yet retaining the maximum of individual freedom consistent with a general mobilization of effort."[72]

Although these passages in *Lichter* can be read as suggesting that Congress does have the power in wartime to conscript "property and workmen," it is questionable whether this language should be interpreted so broadly. Congress may of course direct the *taking* of property for a public purpose in wartime or peacetime. It is only in extraordinary circumstances, however, that the Fifth Amendment requirement that just compensation be paid is inapplicable. While there is no "rigid" rule for determining when compensation must be paid for wartime appropriations of property, it seems that compensation is not due if use or destruction of the property is deemed necessary during actual military operations.[73] On the other hand, appropriations of property for future use in connection with a war effort can necessitate compensation.[74] Conscription of workmen for defense production jobs would appear more analogous to the taking of property for future use than to the use or destruction of property by military operations, and it might be assumed that the circumstances under which Thirteenth Amendment protections are deemed inapplicable to such conscription would be no less exceptional than the circumstances under which the Fifth Amendment's just compensation protection is denied to property owners.[75]

The mention in *Lichter* of alternatives in terms of "retaining the maximum of individual freedom" consistent with necessary effectuation of the exercised power suggests another line of cases of possible relevance in assessing the validity of a civilian conscription plan. In a case in which the legitimate congressional concern of protecting national security impinged upon personal freedoms, Chief Justice Warren, quoting from Chief Justice Marshall's opinion in ***McCulloch* v. *Maryland***, concluded that "the Constitution requires that the conflict between congressional power and individual rights be accommodated by legislation drawn more narrowly to avoid the conflict."[76]

Although that case involved First Amendment freedoms, it relied in part upon another case holding that protection of the right to travel, derived from the "liberty" component of the Fifth Amendment's due process clause, necessitated a more narrowly drawn statute.[77] Furthermore, the "right to hold specific *private* employment and to follow a chosen profession free from unreasonable governmental interference comes within the 'liberty' and 'property' concepts of the Fifth Amendment,"[78] as well as the Thirteenth Amendment's right to be free from involuntary servitude.[79] Although it involved a state law, the Court's decision in ***Shelton* v. *Tucker*** also stands for the principle that legitimate legislative purposes "cannot be achieved by means that broadly stifle fundamental personal liberties when their end can be more narrowly achieved."[60]

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[72] Id., at 765–766.

[73] ***United States* v. *Caltex***, 344 U.S. 149 (1952).

[74] Id., at 153, distinguishing ***Mitchell* v. *Harmony***, 54 U.S. (13 How.) 115 (1852), and ***United States* v. *Russell***, 80 U.S. (13 Wall.) 623 (1871).

[75] For an argument that one has a "property" interest in his own labor such that conscription should be considered an unconstitutional taking of property without just compensation (unless, of course, fair market value were paid for such labor), see Adickes, The Constitutional Invalidity of the Draft, 46 S. Cal. L. Rev. 385 (1973).

[76] ***United States* v. *Robel***, 389 U.S. 258, 268 n. 20 (1967).

[77] ***Aptheker* v. *Secretary of State***, 378 U.S. 500, 509 (1964).

[78] ***Greene* v. *McElroy***, 360 U.S. 474, 492 (1959) (emphasis added).

[79] ***Pollock* v. *Williams***, supra n. 67.

SUMMARY

Although the Supreme Court's decision in the *Selective Draft Law Cases* has been roundly criticized, even by some who agree with the result,[61] there is little reason to believe that the Court in the foreseeable future would reverse that 1917 decision, if presented with a case challenging a new draft law, and hold that the power to raise and support armies does not comprehend the power of conscription for military service. At least since the *Selective Draft Law Cases*, military conscription has been one of the recognized historical exceptons to the Thirteenth Amendment's prohibition on involuntary servitude. And though the Court has not yet directly held that military conscription prior to a formal declaration of war is constitutional, other decisions interpreting the breadth of the war powers strongly suggest that peacetime conscription could be upheld as a necessary and proper means of preparing for war.

On the other hand, it is very questionable whether Congress has power, independent of its power to raise and support armies, to conscript labor for nonmilitary purposes. Also, if some other source of power be found, there is no recognized exception to the Thirteenth Amendment's ban on involuntary servitude obviously applicable to such federal conscription for civilian work. Thus the constitutional validity of the civilian component of a conscription plan is likely to turn on the issue of whether it is necessary and proper means of effectuating the power to raise armies. Congress has broad but not unlimited choice of appropriate means to effectuate its granted powers.

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2. Including Women in Registration Procedures Under the Selective Service Act: Constitutional Considerations

(Karen J. Lewis)

On February 9, 1980, when President Carter proposed that both young men and women be required to register for possible military service, he said, "My decision to register women is a recognition of the reality that both women and men are working members of our society. . . . It confirms what is already obvious—that women are now providing all types of skills in every profession. The military should be no exception." It should be noted, however, that President Carter said when, and if, a draft should actually become necessary, women would be drafted for noncombat duty only.

The President already has the statutory authority to reinstitute registration for males between the ages of 18 and 26. He has only to go to the Congress for the appropriations needed to begin the male registration procedure. The registration section of the Military Selective Service Act, suspended for the past few years, is the source of the President's authority. (See 50 U.S.C. App. 453.)

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[60] 364 U.S. 479, 488 (1960).

[61] See Malbin, supra n. 4, at 807.

Registration of women, however, is a new legal question. They have never been required by law to register for induction, or to serve involuntarily in the armed forces. In November, 1942, the War Department considered drafting women because it foresaw a need to relieve the manpower shortage, especially in the army, during World War II. The War Department proposed to the Congress this inclusion of women in the draft. The proposal was rejected. Therefore, if Congress approves Carter's plan, it will be the first time in American history for women to be subject to draft registration.

Almost certainly, debate will arise in Congress over whether to change past policy and amend the existing law to include women in registration procedures under the Selective Service Act. A central question before Congress, and the topic of this paper, is whether, in the reinstatement of the standby draft registration, the continued exclusion of women would constitute unconstitutional sex discrimination against either women or men. The answer to that question, unfortunately, is not at all clear-cut.

The key to determining whether the exclusion of women from the registration requirements for the draft would constitute unconstitutional sex discrimination appears to lie in the standard of review a court would apply to the gender-based classification in its analysis of a case involving an equal protection challenge brought under the Fifth Amendment.

"Classification" in this context refers to the fact that in the past, only men as a "class" were subject to registration for the draft. The question remains whether women as a "class" should also be subject to draft registration.

In the process of hearing and deciding cases involving equal protection challenges, the Supreme Court has developed three standards of review. There is the (1) traditional standard, which mandates restrained or passive review. There is a second standard that has evolved requiring (2) active review, or strict scrutiny, and the application of a more stringent test. And, in the case of gender-based discrimination, (3) an intermediate standard has also been articulated by the Court.

Each standard of review, when applied to legislative classifications (i.e., all men, all women, all taxpayers, all farmers being subject to disparate treatment under the law), has a different result. For example, when passive review is used, it is fairly likely that the legislative classification will be upheld. However, when the more stringent test of active review is used, there is a greater burden of proof on the Government to justify the classification adopted. Then, unless the Government can show compelling state interests at stake in the use of the classification, the legislation involved will not pass constitutional muster.

When the third test is used—the intermediate standard applicable in gender-based cases such as the registration of women for the draft—the Government must meet a standard of proof higher than that for passive review, but not as rigorous as that needed for active review. In this instance, then, for the Government's classification to be deemed constitutional, all that must be demonstrated is that the governmental objectives served by the classification are important and that use of the classification is "substantially related" to the achievement of recognized Government goals.

In December, 1976, the Supreme Court formulated the intermediate standard of review in *Craig* v. *Boren*, 429 U.S. 190. *Craig* is the Court's most definitive statement on sex discrimination with respect to the standard of review to be applied in equal protection cases. *Craig* clearly establishes that legislative distinctions based on sex fall just short of demanding application of the active review standard.

The earlier draft cases had upheld the exclusion of women because the classification met a rational basis justification under the passive review analysis. The exclusion did not violate the Fifth Amendment's equal protection guarantee because military necessity, national defense and security, maximizing efficiency and minimizing costs were all reasonable objectives. In another draft case, a court applied the stronger judicial standard, i.e. strict scrutiny, and upheld the gender-based classification in the draft law and dismissed the defendant's argument that it was "invidiously discriminatory." The court found that such classifications are justified by the compelling government interest to provide for the common defense. (See *U.S.* v. *Dorris*, 319 F. Supp. 1306 [W.D. Pa. 1970].) These earlier cases illustrate courts' inconsistency in review prior to the establishment of the intermediate standard in *Craig*.

A recent case relating to women and the military in which the intermediate standard of review was applied is *Owens* v. *Brown*, 455 F. Supp. 291 (D. D.C. 1978). This case involved a challenge to the statutory ban on assignment of female personnel to duty on navy ships other than hospital ships and transports.

Judge Sirica held that an absolute ban on the assignment of female personnel to sea duty, except certain ships, abridged the equal protection guarantee embodied in due process clause of the Fifth Amendment. In addition, the classification was found not to be substantially related to the achievement of important governmental objectives. In striking down as unconstitutional 10 U.S.C. 6015, Judge Sirica did not, however, order an immediate equality of men and women at sea, but left it to the Navy to decide "with measured steps" how and when to begin deploying women aboard ships. Up to now, cases in which the Supreme Court has struck down gender classifications have largely, but not wholly concerned secondary issues of public importance.

Can the exclusion of women from draft registration meet the intermediate standard of review test? In any legal analysis regarding the constitutionality of excluding women from registration procedures under the Selective Service Act, one must consider the implications not with respect just to registration but also with regard to the draft, i.e., actual induction, and then ultimately to combat activity. In this scale of progression, registration is at the lower end, with induction in the middle and combat at the top. In assessing the constitutionality of excluding women at each level, the intermediate standard of review would be applied to ascertain if the equal protection guarantee of the Fifth Amendment has been violated. The Government, for its part, must show that it has "substantial" interest at stake. The two most frequently used governmental justifications for the exclusion of women from the draft and from combat advanced in the past generally include: (1) national security, linked to military necessity and military preparedness contentions and (2) maximising military efficiency and minimising disorder, discipline problems and decline in morale. These governmental objectives would be accorded different weight at each level of consideration, from registration, to induction, to combat.

It is worth noting that dicrimination against women in a military context has been upheld by the U.S. Supreme Court for varied reasons. (See *Schlesinger v. Ballard*, 419 U.S. 498 [1975] and *Personnel Administrator of Massachusetts v. Feeney*, 47 U.S.L.W. 4650 [June 5, 1979].) The interesting point about *Feeney* is that the Court was upholding a veteran's preference system in Massachusetts which clearly impacted on women in a negative way, i.e., exclusion of a very high percentage of women from civil service positions in the State Government, because most veterans are men. Excluding women from registration would tend to exacerbate the current impact of veteran's preference systems on women.

In summary, in order to analyse the problem of whether the exclusion of women from the registration system would constitute unconstitutional sex discrimina- violated. He will assert he has been burdened by the exclusion of women from classification must meet the intermediate standard of review as articulated by the Supreme Court in *Craig v. Boren*. This standard is easier to meet than is the strict scrutiny—compelling state interest standard applied in race discrimination cases. Then, since the question regarding women's exclusion from draft registration involves the military, the concept of military necessity must be considered and weighed in the application of the intermediate standard of review. If there is a challenge to the exclusion, it will probably be brought by a male claiming that his Fifth Amendment guarantees for equal protection and due process have been violated. He will assert he has been burdened by the exclusion of women from the registration system because his individual chance of being drafted has thereby been increased via the smaller selection pool. One can conceive, however, of cases being brought by excluded women.

A court hearing the male challenge will probably apply the *Craig* standard of review and decide whether the Government's objectives of assuring military necessity, maximizing military efficiency, and minimizing the costs of maintaining an expert military force are sufficiently substantial government interests to warrant the exclusion of women from registration requirements for the draft.

Another point is that as one moves up the scale from registration, to the actual induction, and ultimately to combat, the Government may have an increasingly easier time in meeting the intermediate standard in defense of the exclusion of women. This is true, in part, because simultaneously as one moves up the scale, the military necessity and administrative military efficiency justifications appear stronger. It is arguable, however, that one can view registration as part of the entire process rather than as a separate isolated stage, i.e., necessary in preparation for rapid mobilization. If that is the approach taken, then the Government's justification would be accorded greater weight even at the registration stage.

Still, the question as to whether the exclusion of women for the purposes of registering for the draft constitutes unconstitutional sex discrimination is an issue which does not lend itself to easy determination. On the basis of recent precedent, it would seem to depend on how the Court weighs the Government's justifications in light of the present intermediate standard of review applicable in sex discrimination cases where an equal protection challenge can be made.

FURTHER READING

Report No. 80-27 F. Women in the Armed Forces: Proceedings of a CRS Seminar held on Nov. 2, 1979 and Selected Readings. Robert L. Goldich, analyst in national defense, Foreign Affairs and National Defense. February 14, 1980.

American Law Division Report. A Legal Analysis Regarding the Constitutionality of Excluding Women from Registration and Classification Procedures under the Selective Service Act. Karen J. Lewis. June 14, 1979.

American Law Division Report. Sex Discrimination and the Military—Women in Combat. Donna C. Parratt. February 17, 1977.

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See also, What Role for Women in the Military? by Ellen C. Collier, CRS REVIEW, July–August 1979.

3. FAILURE TO REGISTER WITH THE SELECTIVE SERVICE SYSTEM

CONGRESSIONAL RESEARCH SERVICE,
THE LIBRARY OF CONGRESS,
Washington, D.C., April 5, 1980.

To: Hon. Robert Kastenmeier, Chairman, Subcommittee on Courts, Civil Liberties and the Administration of Justice, House Committee on the Judiciary. Attn: Michael J. Remington, Counsel.

From: American Law Division.

Subject: Failure to Register with the Selective Service System: Criminal Law, Enforcement and Prosecution.

You have requested an analysis of the criminal proscriptions for failure to register with the Selective System or refusal of induction under the Military Selective Service Act of 1967, as amended. Specifically, you requested that we determine (1) whether, and to what extent, failure to register was a continuing offense, (2) the state of mind requisite to the violation of the registration requirements, and (3) what policies were followed and/or are extant with regard to dismissal of prosecution for failure to register or refusal of induction if the defendant enlists in the military service. After a general introduction to the relevant statute, we shall consider these questions seriatim.

Section 3 of the Military Selective Service Act of 1967, as amended, provides, in pertinent part:

"Except as otherwise provided in this title, it shall be the duty of every male citizen of the United States, and every other male person residing in the United States, who, on the day or days fixed for the first or any subsequent registration; is between the ages of eighteen and twenty-six, to present himself for and submit to registration at such time or times and place or places, and in such manner, as shall be determined by proclamation of the President and by rules and regulations prescribed hereunder.

Act of June 24, 1948, ch. 625, 62 Stat. 604, as amended in pertinent part by an Act of June 19, 1951, ch. 144, 65 Stat. 75, as amended by Public Law 90-40, 81 Stat. 100, June 30, 1967, as amended by Public Law 92-129, § 101(a)(2), 85 Stat. 348, September 28, 1971. For failure to comply with prescribed registration, section 12 of the Military Selective Service Act provides a criminal penalty, in pertinent part:

"(b) Any person . . . ; or (6) who knowingly violates or evades any of the provisions of this title or rules and regulations promulgated pursuant thereto relating to the issuance, transfer, or possession of such certificate, shall upon conviction, be fined not to exceed $10,000 or be imprisoned for not more than five years, or both. Whenever on trial for a violation of this subsection the defendant is shown to have or to have had possession of any certificate not duly issued to him, such possession shall be deemed sufficient evidence to establish an intent to use such certificate for purposes of false identification or representation, unless the defendant explains such possession to the satisfaction of the jury.

"(c) The Department of Justice shall proceed as expeditiously as possible with a prosecution under this section, or with an appeal, upon the request of the Director of Selective Service System or shall advise the House of Representatives and the Senate in writing the reasons for its failure to do so.

"(d) No person shall be prosecuted, tried, and punished for evading, neglecting, or refusing to perform the duty of registering imposed by section 3 of this title unless the indictment is found within five years next after the last day before such person attains the age of twenty-six, or within five years next after the last day before such person does perform his duty to register, whichever shall first occur."

Id. § 101(a)(31). The development of these provisions, as they are now extent from previous legislation and judicial interpretation are considered with the individual questions.

(1) Continuing Offense Doctrine and the Statute of Limitations. The question of whether an offense continues to to be violated intermittently or on a regular basis is one which is best focused by determining when a prosecution may be brought, a question of the statute of limitations. The fundamental rationale for statutes of limitation is to prevent a person from being charged with activity which happened beyond a reasonable time in the past; the counterbalance of the continuing offense is that a particular activity may be continued for a period of time and that only with the last criminal act, or the cessation of criminal activity, should the statute of limitations commence to run.

Although the question of whether the duty to register is a continuing offense appears to have had several answers in light of the development of regulations under the Act, we begin our analysis with the case of *Toussie v. United States*, 397 U.S. 112 (1970). According to the applicable Presidential Proclamation and the date of his birth, Robert Toussie was required to register with the Selective Service System between June 23, and June 28, 1959. For having not registered on between those dates, Toussie was indicted on May 3, 1967. The question presented in *Toussie* was squarely whether failure to register was an offense which was committed and completed when Toussie faller to register by the end of the registration period or continued to be violated until Toussie either registered or became ineligible and not subject to registration. If the offense was complete at the end of the registration period, Toussie's indictment fell outside the five year statute of limitations under 18 U.S.C. 3282 (1958), and was barred. If, on the other hand, the offense was committed each day until Toussie either registered or became ineligible and not subject to registration the five year statute of limitations would not run out until 1972 and his indictment was permissible.

Toussie argued that the language of the statute provided no indication of Congressional intent that the offense be continuous; to the contrary, registration was a "one time" event and failure to register was a completed criminal act which was not repeatable. In arguing for the latter result, the Government pointed to a "continuing duty" regulation which provided in pertinent part, "[t]he duty of every person subject to registration . . . shall continue at all times, and if for any reason any such person is not registered on the day or one of the days fixed for his registration, he shall immediately present himself for and submit to registration. . . ." 32 C.F.R. § 1611.7(c) (1959). The government argued that this regulation merely made explicit that which Congress had implied in the statute. Since the Act provided the same criminal penalty for violation of Selective Service regulations, the government might have argued that the charge included violation of the regulation and that violation was continuing, but it appears that this point was not timely raised in the lower courts. 410 F. 2d 1156 (2d Cir. 1969).

The Court, in an opinion by Justice Black, rejected the government's argument for affirmance of the Court of Appeals, and restated the rule of determining the status of an offense:

"Unlike other instances in which this Court has held that a particular statute describes a continuing offense, there is no language in this Act that clearly contemplates a prolonged course of conduct. While it is true that the regulation does in explicit terms refer to registration as a continuing duty, we cannot give it the effect of making this criminal offense a continuing one. Since such offenses are not to be implied except in limited circumstances, and since questions of limitations are fundamentally matters of legislative not administrative decision, we think this regulation should not be relied upon effectively to stretch a five-year statute of limitations into a 13-year one, unless the statute itself, apart from the regulation, justifies that conclusion."

397 U.S. at 120–121. Accordingly, the Court reversed Toussie's conviction. Justice White dissented, joined by Chief Justice Burger and Justice Harlan, stating that his reading of the statute and legislative history led him to reach the opposite result.

The question of Congressional intent was put to rest with the 1971 amendment of the Act, adding subsection (d) to section (3). Supra, page 2. This provision explicitly provides that the statute of limitation commences to run from the last day of eligibility, not the last day of the initial period of required registration. Senate Report 92–329 graphically indicates the intent of Congress:

"The House version included a provision recommended by the Administration by adding a new subsection 5(d) which will overcome the result in *Toussie* v. *United States*, . . . That opinion interpreted the Act to limit the time for prosecuting men who fail to register to five years and five days after a man's 18th birthday. The Committee language will allow the prosecution of a nonregistrant up to five years after his 26th birthday. It does not change the statute of limitations for any other violation of Selective Service law. This change is deemed appropriate not only as a deterrent to nonregistration but also as a reflection of equity to those men who comply with the Act's regisration requirements and remain liable at least to age 26."

Sen. Rept. 92–93, 92d Cong., 1st Sess. (1971), at 16; reprinted in 1971 U.S. Code, Cong., and Admin. News, 1455–1456. While the language is not so clear as the Committee has presumed it to be, in light of other provisions and structure of the criminal law, the effect of the provision is clear. The statute of limitations on failure to register, under current law, runs out five years after the last day of the potential defendant's twenty-fifth year—on his thirty-first birthday.

(2) State of Mind Element in Failure to Register Offense. Section 12(b)(6) requires facially that the prosecution prove that the defendant "knowingly violates" the registration section or regulations. The specifics of practical settings in which knowledge becomes contested, however, indicate that the knowing violation of the statue or is regulations has posed significant problems of proof. At the outset it should be noted that the state of mind element for failure to register differs significantly from the state of mind element for draft evasion, refusal to be inducted, or violation of other regulations under the Act.

Beyond the provisions of a knowing state of mind, the statute also provides a presumption,

"Every person shall be deemed to have notice of the requirements of this title upon publication by the President of a proclamation or other public notice fixing a time for any registration under section 3."

§ 15, 62 Stat. at 624. This presumption of knowledge of the duty to register with the Selective Service has been held not to extend to the criminal offense of failure to register, but goes only to the completeness of the duty to register. *United States* v. *Boucher*, 509 F. 2d 991 (8th Cir. 1975). One of the rationales discussed by the court revolved on the construction of the statutory provisions, including the lack of the presumption stated within the criminal offense, as is often done.[1] Accordingly, the court retained its previous ruling that actual knowledge of the duty to register must be proven by the prosecution, albeit that such actual knowledge must be proven by circumstantial evidence.

The court specifically conceded that Congress could, if it so desired, provide for a full presumption of knowledge. This would effectively make failure to register a "strict liability" offense. However, since the rules of lenity would not permit a court to interpret such a presumption to exist where it was not explicitely provided, the court retained its previous holdings, *United States* v. *Klotz*, 500 F. 2d 580 (8th Cir. 1974), rehearing denied, 509 F. 2d 1056 (8th Cir. 1974), and required actual knowledge of the duty to register with the Selective Service. In *Boucher* the government proffered only evidence of a publicity campaign to alert persons required to register of that fact. No evidence was proffered that Boucher actually knew of this requirement; to the contrary, evidence was elicited, apparently on cross-examination, that the Selective Service was aware of confusion among those required to register. and that many persons did register late, during the period in which Boucher failed to register. Accordingly, the conviction was reversed.

In prosecution of other offenses under the Act, the act of registration has been used as the premise for proof of knowledge of the regulations which a registrant was accused on violating—such as that requiring the registrant to keep a current address on file—or evading regulations providing for selection and induction into the armed forces. In this vein, we note that the repeated commission of a required act can be utilized to provide the inference of actual knowledge of the requirement that the act must be performed on a regular basis in a prosecution for failure to perform that act. See e.g., I.R.C. § 7202, 26 U.S.C. 7202 (1976) (failure to file income tax returns). In the instant case, however, registration must be performed only once, even if the requirement to register continues for the duration of the induction liability period. Accordingly, there is no pattern available to provide such an inference.

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[1] The court drew on several statutes for analogy, including the former presumption that a firearm possessed by a felon has traveled in interstate commerce. Act of June 30, 1938. § 2(f), c. 850. 52 Stat. 1250 (as amended) upheld in *Tot* v. *United States*, 319 U.S. 463 (1943) (currently 18 U.S.C. 922(f)). and the presumption that presence at an illegal still constituted operation, I.R.C. § 5601. 26 U.S.C. 5601 (1970), discussed in *United States* v. *Romano*, 382 U.S. 136 (1965) and *United States* v. *Gainey*, 380 U.S. 63 (1965). See, Boucher, at 509 F. 2d at 991.

(3) Prosecutorial Diversion to the Armed Forces. The third question resolves around a particular type of prosecutorial quid pro quo which is not properly classified as a plea bargain. Under this quid pro quo to dispose of a criminal indictment, the defendant would be required to enlist in the armed forces. This type of agreement was utilized during the Vietnam conflict, but its effects were not consistent, especially when the defendant was denied enlistment for medical or other reasons which would have kept that person out of service if he had been processed in induction. See, Presidential Clemency Board, Report to the President 47 (1975). A variety of questions were raised about this type of diversion, including whether the person so diverted had an acceptable attitude for military service, as well as the propriety of the bargain being struck. Subsequently, the Department of Justice apparently modified its position to preclude this type of diversion from the criminal justice system into the military. The extant United States Attorneys Manual, in dealing with non-Selective Service cases after the cessation of registration, provides:

> "Present regulations of the Armed Services prohibit the enlistment of an individual against whom criminal or juvenile charges are pending or against whom the charges have been dismissed to facilitate that individual's enlistment. This policy is based, in part, on the premise that the individual who enlists under such conditions is not properly motivated to become an effective member of the Armed Forces.
>
> "Determination as to whether prosecution should be instituted or pending criminal charges dismissed in any case should be made on the basis of whether the public interest would thereby best be served and without reference to possible military service on the part of the subject. The Armed Forces are not to be regarded as correctional institutions and United States Attorneys are urged to give full cooperation to the Department of Defense in the latter's efforts to ensure a highly motivated all-volunteer Armed Force and to bolster public confidence in military service as a respectable and honorable profession.
>
> "There may be exceptional cases in which imminent military service, together with other factors, may be considered in deciding to decline prosecution if the offense is trivial or insubstantial, the offender is generally of good character, has no record or habits of anti-social behavior and does not require rehabilitation through existing criminal institutional methods and failure to prosecute will not seriously impair observance of the law in question or respect for law generally. In no case, however should the United States Attorney be a party to. or encourage, an agreement respecting foregoing criminal prosecution in exchange for enlistment in the Armed Services."

United States Attorneys' Manual § 9–2.021 (October 20, 1978). If this is utilized a premise, it would seem to follow that the Departments of Justice and Defense would be still more loathe to participate in the induction of defendants as an alternative to prosecution when the offense charged indicates a predisposition against military service generally, if not specific and demonstrable. Accordingly, we feel it is reasonable to assume that a policy of diversion of those charged with Selective Service offenses into the Armed Services would not be reinstituted with the reinstitution of registration.

In sumary, (1) failure to register is now an offense which may be prosecuted until the potential defendant has attained the age of thirty-one: (2) the state of mind requirement for failure to register is "knowing": that is a requirement that the person be aware of the requirement and fail to act: and (3) the Departments of Justice and Defense currently have a policy of not referring defendants for military enlistment as a quid pro quo for dismissal of charges and we consider it unlikely that this will change if registration is reinstituted. If we may be of further service, please feel free to call on us.

LELAND E. BECK,
Legislative Attorney.

4. Selective Service Registration: An Overview of Legal and Enforcement Issues

(Leland E. Beck, Legislative Attorney, American Law Division)

I. INTRODUCTION

The question of conscription and compulsory military service has been answered in a variety of ways throughout the history of the Republic. Recent experience paritcularly indicates that a number of thorny constitutional and legal issues attend this question which have never been adequately answered, whether by Congress, the Executive, or the Judiciary, in their respective realms.

The purpose of this report is to review some of the issues which appear incumbent to the determination of whether and to what extent the United States should utilize a system of Selective Service registration. In particular, the effects of reinstitution of a registration scheme on the justice system—enforcement, prosecutorial, judicial and corrective—are discussed in terms of potential systemic costs. The purpose of the report is not to provide answers to any particular questions, but merely to focus on questions in such a way that, together with consideration of manpower economics, military needs, national defense, and other factors, policy decisions can be made by Congress which will require minimal interpretation for implementation. This paper assumes that some degree of criminal enforcement of a registration scheme will be necessary; that is to say that a mandatory registration would be reinstated and that a significant degree of non-compliance may be expected.

While it is clear that the most pressing of issues in this area are those of constitutionality, this report will consider constitutional problems only in the particular context in which they arise. Accordingly, this report will not reconsider the long standing debate over the constitutionality of conscription per se.[1] Such a debate additionally involves questions of whether the currently extant conscription statute suffers particular constitutional infirmity, such as whether equal protection problems are posed by requiring registration and conscription of only men, excluding women.[2] This paper will assume that Congress determines not to change the present structure of the Military Selective Service Act of 1967[3] and that the President determines that a form of registration is required. If we make the further assumption that conscription and induction are necessary, then the assumption must also be made that the Congress has authorized and appropriated funds to carry out such a program without altering the fundamental statute. Accordingly, the question upon which this paper revolves is whether there are significant policies or practices which may be utilized to avoid perceived past difficulties in the administration of military conscription, and, more particularly, the judicial enforcement of military conscription.

II. ENFORCEMENT ISSUES

The fundamental question of enforcement is detection of violations and whether particular techniques, whether constitutional, are otherwise acceptable. We note here three particular issues: (1) the "chilling effect" or certain techniques for detection of unlawful activity on the political opposition to a policy of conscription, (2) hte effect of ambiguity in the definition of certain offenses on the first question, and (3) whether other recently enacted legislation on the subject of privacy has implications for detection of violations of the law.

The question of "chilling effects" has been raised in several contexts, most notably the context of military surveillance of civilian political activities.[4]

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[1] See, generally, G. Costello, American Law Division, Congressional Research Service, "Military and Civilian Conscription: Constitutional Issues", July 30, 1979.

[2] See, generally, K. Lewis, American Law Division, Congressional Research Service, "A Legal Analysis Regarding the Constitutionality of Excluding Women from Registration and Classification Procedures under the Selective Service Act", June 14, 1979.

[3] Act of June 24, 1948, ch. 625, 62 Stat. 604, as amended, Act of June 19, 1951, ch. 144, 65 Stat. 75, as amended by Pub. L. 90–40, 81 Stat. 100, June 30, 1967, as amended by Pub. L. 92–129, 85 Stat. 348, September 28, 1971, found at 50 U.S.C. App. § 451 et seq. (1976).

[4] See, *Laird* v. *Tatum*, 408 U.S. 1 (1972) (standing); *Schlesinger*, v. *Reservists Committee to Stop the War*, 418 U.S. 206 (1974) (Members of Congress; permissibility of holding reserve positions).

However, the premise that governmental action may chill an individual's right to express a political viewpoint under the First Amendment is not inextricably connected with military conscription, especially when war has not been declared under Article I, Section 8, clause 11 of the Constitution. For example, increased evasion of military conscription may occur in those instances when the Congress had not formally declared war or in which other means of expressing the urgency of foreign affairs—such as mobilization of ready reserves—have not been utilized.

The extent to which enforcement of a peacetime draft may have such a consequence will be based on a variety of administrative and enforcement processes, including, but not limited to: the applicability and scope of exemptions from the draft, most notably the definition historically known as the "conscientious objector", the process which is due for determining any classification which exempts an individual from conscription.

Compounding the First Amendment issues are the ambiguities of the criminal provisions of the present statute. For example, the question of "counseling" can take on both First Amendment and criminal meanings. The line between First Amendment counseling of a person on how to acquire a particular classification status and how to avoid conscription on the one hand, is very fine compared to the criminal act of counseling (aiding and abetting) a person in evasion of the conscription.[5] Such ambiguity in the statement of criminal offense has caused difficulty in enforcement in the past and may be expected to do so in the future.

A third difficulty with enforcement is the implication of legislation passed in the past few years for the protection of individual privacy, and bills currently before the Congress, and the incident at which enforcement efforts will run counter. For example, the Privacy Act of 1974[6] provides for only limited information exchanges between governmental agencies so that agencies can not cumulate a "central" information file on an individual.

However, the cross reference of particular files has been found in a number of instances to illuminate higher instances of criminal conduct. This type of problem is one which must be answered on a larger scale since it raises far broader law enforcement questions than need presently be asked.[7] Of greater significance is the use of informants by investigatory agencies and the infiltration of political groups by investigative agents. This type of question is specifically raised by the "FBI Charter" legislation.[8] While the use of informants and undercover agents generally has not previously been questioned, the use of such techniques in the context of law enforcement which has clear First Amendment implications has not met with widespread approval.

III. PROSECUTIVE ISSUES

Assuming that a violation has been detected, it is by no means clear that prosecution will result. First, and foremost, the question of whether the individual case merits prosecution bears close scrutiny. Additionally, certain policy conclusions may be reached which effectively determine the scope of prosecution.

In a variety of referrals to the Department of Justice, particular cases are declined for reasons from incomplete investigation and insufficient evidence of a particular element of the crime to the improper, or unconstitutional, acquisition of certain evidence on which the case hinges. Accordingly, it is often thought by prosecutors that "no two cases are the same" and no policy can be developed which covers a variety of cases in any substantially controlling manner. A number of referral questions are posed.

The question of timeliness of a referral is one which may plague prosecution of Selective Service cases. In the first instance, section 12(c) of the Act provides that the Department of Justice shall expeditiously file cases referred by the Selective Service.[9] While this provision has not been construed to provide a remedy to the defendant, charged or putative, it may substantially interpret the due process constrictions on pretrial delay.[10]

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[5] § 12(b) provides a group of offenses, including presumptions that possession of an altered Selective Service certificate is sufficient to prove intent to utilize that certificate for false identification or other proscribed purposes. Counseling, aiding and abetting is a distinct offense which does not require a principal. *See, generally, United States* v. *Spock*, 416 F. 2d 165 (1st Cir. 1969); *United States* v. *Leibowitz*, 420 F. 2d 39 (2d Cir. 1969).

[6] 5 U.S.C. § 552a (1976).

[7] See, also, I.R.C. § 6103, 26 U.S.C. § 6103 (1976, Supp. 1977) (tax records); 13 U.S.C. § 9 (1976) (Confidentiality of census records).

[8] H.R. 5030, S. 1612, 96th Cong., 1st Sess. (1979).

At the same time, since last these prosecutions were vigorously brought, the restrictions on the time between the handing up of an indictment and the commencement of trial have been markedly curtailed by the Speedy Trial Act of 1974, as amended.[11] This cataloque of timing requirements must be imposed on the recency of interviews wihch make up a referral file from an agency to the Department of Justice, as well as the composition of the evidence contained in the file and the need for additional evidence.[12]

A second prosecutive issue focuses on the exercise of discretion—not only as to the question of whether a Selective Service violation should be prosecuted, but whether and under what conditions the charge should be reduced or otherwise mitigated. In the past, there has been significant concern for the "plea bargain" or dismissal of the indictment in return for the defendant's enlistment in the armed forces; such an agreement has had a "Catch 22" quality if the defendant is ineligible or is rejected for health or other reasons.[13]

In determining when such a prosecution should be brought, the United States Attorney would normally consider a variety of background facts to determine the deterrent effect which an individual prosecution would have on the scope of violations; however, selectivity in prosecutions, especially in regard to this area of the criminal law has raised significant equal protection and First Amendment problems.[14] Such disparate treatment can be mitigated in part by the use of particularly limiting prosecutorial policies, although these too may be subject to collateral attacks after conviction.[15]

In particular, the development of prosecution standards is one which suffers many of the same disparaties to be encountered in sentencing of offenders by the courts. Decentralization, while adding somewhat to the reflection of community standards in the development of prosecutorial priorities, provides no firm capacity for the control of sensitive prosecutions such as those involved in Selective Service cases. In particular, the lack of control of prosecution has historically led to the prosecutorial version of the first major judicial issue: forum shopping.

IV. JUDICIAL ISSUES

The administration of criminal justice provides several poignant issues for the administration of a military conscription system. As noted, the first of these will be that of forum shopping. In addition there are issues of proper defenses to criminal prosecution, the cumulative effects of the administrative and prosecutive decisions which must be made on the courts, and sentencing disparity.

During the Vietnam conflict a significant number of Selective Service offenses were committed in the Central or Northern Districts of California due to the general level of punishment imposed by the judges of those districts. This phenomenon, more common in civil litigation, but nonetheless apparent in criminal selective service violations, is "forum shopping". In the case of registrants about to be inducted, the process was one of changing addresses so that the induction order would specify compliance at the induction center in Oakland, California. Upon arrival, the registrant would refuse to submit to induction and that violation would be within the jurisdiction of the Northern District of California. These districts alone accounted for over 20 percent of Selective Service cases in the reporting year ending June 30th, 1972.[16] To the extent that this is a bona fide change of address, and not merely a change to acquire an advantageous trial bench, there are significant constitutional right to travel implications. However, the load developed on a particular bench in light of this type of forum shopping can have both deliterious effects on that bench and become a self-fulfilling prophecy; the demand for trial of a particular type of case before a bench which is already prone to dismiss or acquit may regenerate and reinforce the predisposition to dismiss or acquit.

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[9] Supra, note 3, found at 50 U.S.C. App. § 462(c) (1976). This provision also requires the Department of Justice to advise the House and Senate in writing of the reasons for failure to do so: this would include, presumably, a report on unprosecutable cases.

[10] See, *United States* v. *Periera*, 524 F. 2d 969 (5th Cir. 1975); *United States* v. *Golon*, 511 F. 2d 298 (1st Cir.) cert. denied 421 U.S. 992 (1975); *United States* v. *Dyson*, 469 F. 2d 735 (5th Cir. 1972).

[11] 18 U.S.C. § 3161 *et seq.* (1976), as amended by Pub. L. 96–43, 93 Stat. 327, August 2, 1979; 18 U.S.C.A. § 3161 et seq. (Supp. 1980).

[12] A major problem in many agency referrals, not just those from the Selective Service System, historically, has been the age of the contents. Many files must be redone in order to ensure that the witness's memories and material will meet evidentiary standards at trial.

[13] This policy has been generally eschewed in the past several years, not just with respect to Selective Service violations, which have not been brought during this period. United States Attorneys' Manual § 9–2.021 (October 20, 1978). *See,* Presidential Clemency Board. *Report to the President* 47 (1975).

[14] See, *United States* v. *Falk*, 472 F.2d 1101 (7th Cir. 1972) on rehearing en banc 479 F.2d 616 (7th Cir. 1973). See also, *Two Guys from Harrison-Allentown Inc.* v. *McGinley*, 366 U.S. 582, 588 (1961) (Sunday closing law); *United States* v. *Steele*, 461 F.2d 1138 (9th Cir. 1972) (Census violations). In the case of Selective Service violations, this question can be raised to manifold proportions because the scope of violations is more unknown than is usually the case. Thus the question of selectivity in prosecution is similar in universe to that of census violations, since, presumably, both attempt to count all persons, or persons in a particular group.

[15] See, generally, L. Beck, "The Administrative Law of Criminal Prosecution: The Development of Prosecutorial Policy," 27 Am. U. L. Rev. 310 (1978).

A second judicial problem arises in the context of pretrial diversion; the concept of diverting a defendant from the criminal justice system entirely if the defendant shows little or no inclination to commit further crime and/or other corrective action can be more effectively taken than criminal prosecution to remedy the cause of the violation.[17] While the process of diversion is generally controlled by the prosecutor, there are significant questions of the propriety of diversion of cases in which the convictability of the defendant is in serious doubt, either for evidentiary or practical reasons, such as the lack of "jury appeal" or the likelihood of judicial dimissal or acquittal.[18] In a setting such as the Northern District of California during the Vietnam conflict, manifold questions of due process can be raised with regard to the defendant who registers or is inducted as part of a diversion or plea agreement. More general questions exists as to the amount of process which is due when such a diversion is terminated.

A third major issue is the proper scope of defenses which are to be interpreted from the Act and the activities of the Selective Service System. For example, the definition of the "conscientious objector" status is subject to significant debate, such as erroneous classification. The procedure for determining whether that status applies is also subject to significant due process challenges—such as irregularity in procedures, arbitrary actions, and the like.[19] Whether that debate may be presented to the jury in defense or mitigation or defense, or is the proper underpinning only for habeas corpus relief after induction, are questions which have been historically answered inconsistently, and may deserve significant Congressional attention.[20]

Finally, in those cases in which trial is had and conviction results, there exists a major concern for the fairness and uniformity of sentencing. The pattern of sentencing after conviction in Selective Service cases has tended to follow that of the dismissals and acquittals. In those districts in which there were high rates of dismissals or acquittals, there also tended to be an average lower sentence upon conviction than the nationwide average in which those sentences were a part.[21] Whether an equal protection argument could be raised that such disparity—based on either predilections of the bench toward the type of case or defendant, the quality of counsel, or the ability or inability to forum shop—none appears to have been successful.[22] Given the range of sentencing possibilities, in light of the defenses and mitigations which may be applicable to a given case, disparity may be advantageous to the principled administration of the criminal justice system. However, the disparity which can be attributed to forum shopping and individual judicial predilections may not.

Finally, inquiry should be made into the cumulative effects of the factors which have been discussed. No single factor up to this point can be extricated from the systematic flow of the criminal process. The cumulative effects of a single day or limited period of registration together with particular prosecutive policies, and in light of constrictions of the speedy trial act and other mandatory criminal procedures, may place a heavy burden on the justice system in general and individual districts in particular, resulting in either delayed or hasty justice.[33]

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[16] Administrative Office of the United States Courts, Annual Report of the Director, A-44–A-47 (1972). Furthermore, these districts had extremely high dismissal and aquittal rates when compared with a nationwide average. This will also be discussed in terms of sentence disparity. See, Presidential Clemency Board, supra, note 13, at 45–46.

[17] See, generally, Aaronson, et al., 2 "Alternatives to Conventional Criminal Adjudication," Chapter 5 (1977).

[18] See, generally, United States Attorneys' Manual, § 1–12.000 et seq. (Jan. 10, 1977). See, also, United States Attorneys' Manual, § 9–2.021 (Oct. 20, 1978), discussed above.

[19] McKart v. United States, 395 U.S. 185 (1969). Cf. McGee v. United States, 402 U.S. 479 (1970).

[20] United States v. Nelson, 476 F.2d 254 (9th Cir. 1973); United States v. Burton, 472 F.2d 757 (8th Cir. 1973); United States v. Blaylock, 448 F.2d 1307 (4th Cir. 1971), cert. denied 404 U.S. 1063 (1971); United States v. Weaver, 474 F.2d 936 (7th Cir. 1973).

[21] See, note 16, supra, and references therein.

[22] See, e.g., United States v. Baker, 487 F.2d 360 (2d Cir. 1973); United States v. Brown, 470 F.2d 1170 (2d Cir. 1973); Woosley v. United States, 478 F.2d 139 (8th Cir. 1973). But, see, United States v. McKinney, 466 F.2d 1403 (6th Cir. 1972); United States v. Daniels, 446 F.2d 967 (6th Cir. 1971).

V. CORRECTIVE ISSUES

Beyond the normal end of the criminal justice system, there are still significant problems of those who are convicted and sentenced. These problems, in light of past indications, can be summarized as the creation of a unique prison subpopulation which does not integrate well with the general population. In substance, the convicted Selectrive Service violator will be younger than the average federal prison populace; will be a first time offender, as contrasted wtih the average multiple recidivist; and, in many cases, may have a "cause" which led him to this violation whereas the average federal prisoner may be a "career criminal". Significant problems may be expected from the interaction of two such diverse groups required to share prison facilities.[34]

This, of course, assumes that distinction would not be made in the Attorney General's determination of prison for confinement. While it would appear to be true that Selective Service violators have been confined in such maximum security facilities as those at Leavenworth Federal Penitentiary, Kansas, such nondistinction does not need to be the case.

At the same time, disparity in the conditions of probation must be probed, and the appropriateness of those conditions, such as the provision for alternative service required in many conscientious objector cases in the past. The lesser penalty may be equally disparate in application, just as the choice of penalty has been.

In short, the fundamental question of corrective action in which theory of correction is to be applied: punitive, retributive or rehabilitative. While the application of a single theory to a single category of offenses is neither theoretically sound, the disparity of approaches taken by the courts in this particular area are noteworthy for the lack of central theme. Accordingly, a determinant sentence, a more structured scale of penalties, or the current range may be appropriate Congressional responses.

VI. CONCLUSION

The consideration of reinstitution of a system of Selective Service registration requires a significant consideration of criminal enforcement implications. From the First Amendment/political speech question to the judicial impact of a new draft, a holistic approach needs to be taken to the administrative and judicial functions of Selective Service. This type of approach has not been historically taken, but with the issues raised in this paper, and others, a more holistic review of programmatic implications of registration can be conducted.

5

ADMINISTRATIVE OFFICE OF THE
U.S. COURTS,
Washington, D.C., April 7, 1980.

Mr. ROBERT W. KASTENMEIER,
Chairman, Subcommittee on Courts, Civil Liberties and Administration of Justice,
Rayburn House Office Building, Washington, D.C.

DEAR CHAIRMAN KASTENMEIER: Enclosed are tables presenting the statistical information you requested last week concerning cases in the United States district courts arising from violations of the Selective Service Act. If you compare the figures provided for cases filed from 1966 through 1975 with the figures labeled "total defendants" for the same years, you will have an accurate reflection of the percentage of cases prosecuted. Those cases not prosecuted represent less work for the courts; yet each filing requires time and attention from a clerk's office and inevitably incurs administrative expense.

If we can be of further help to you, please call me or Dave Cook (633-6095).

Sincerely,

WILLIAM JAMES WELLER,
Legislative Affairs Officer.

Enclosures.

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[33] See, R. Davis and P. Nejelski, "Judicial Impact Statements: Determining How New Laws Will Effect the Courts," 62 Judicature 18 (June/July, 1978).

[34] See, Administrative Office of United States Courts, Federal Offenders in United States Courts—1973, H-10 (1974); Presidential Clemency Board, supra, note 13, at 50.

UNITED STATES DISTRICT COURTS
Dispositions of Defendants Charged with Violation of Selective Service Act
Showing Type of Sentence, for the Twelve Month Period Ended June 30, 1945-1977

Year	Total defendants	Not convicted				Convicted and Sentenced				Type of Sentence							Average sentence of imprisonment (in mos.)[3]
				Acquitted by				Convicted by		Imprisonment[1]							
		Total	Dis- missed	Court	Jury	Total	Plea of guilty or nolo contendere	Court	Jury	Total	1 year and 1 day and under	Over 1 year 1 day to 3 years	3-5 years	5 years and over	[2]Pro- bation	Fine and other	
1945....	4,287	1,449	1,399	25	25	2,838	1,823	319	696	2,368	438	775	744	411	453	17	31.9
1946....	2,651	999	943	26	30	1,652	1,130	222	300	1,119	547	281	244	47	521	12	20.6
1947....	2,074	937	908	18	11	1,137	880	176	81	775	394	317	61	3	245	117	18.3
1948....	833	529	511	7	11	304	264	11	29	212	133	69	9	1	84	8	14.1
1949....	506	214	202	3	9	292	263	20	9	213	134	62	17	-	73	6	18.6
1950....	449	274	272	1	1	175	156	6	13	109	78	24	6	1	65	1	13.4
1951....	368	212	202	6	4	156	105	24	27	123	55	17	29	22	32	1	29.6
1952....	561	248	222	16	10	313	160	97	56	272	58	77	97	40	39	2	30.5
1953....	630	285	236	39	10	345	185	129	31	280	61	101	84	34	64	1	29.3
1954....	822	398	278	116	4	424	194	185	45	356	78	137	126	15	64	4	26.4
1955....	719	430	367	57	6	289	157	106	26	217	54	105	47	11	70	2	26.8
1956....	371	185	167	16	2	186	109	67	10	123	35	50	35	3	61	2	24.0
1957....	357	95	75	17	3	262	183	70	9	194	60	85	41	8	68	-	13.7
1958....	325	96	66	26	4	229	154	66	9	190	66	81	42	1	38	1	21.6
1959....	258	56	44	11	1	202	159	39	4	152	36	83	29	4	49	1	23.2
1960....	239	73	65	7	1	166	131	31	4	126	47	48	28	3	37	3	21.5
1961....	244	45	37	8	-	199	160	33	6	141	45	59	35	2	57	1	22.6
1962....	274	49	46	2	1	225	182	31	12	164	58	75	28	3	60	1	21.6
1963....	338	73	66	7	-	265	212	46	7	189	79	63	38	9	74	2	21.5
1964....	276	70	63	6	1	206	161	32	13	146	46	77	22	1	59	1	20.8
1965....	341	99	88	8	3	242	197	28	17	189	64	90	30	5	52	1	21.0
1966....	516	145	132	11	2	371	265	74	32	301	61	128	95	17	64	6	26.4
1967....	996	248	224	22	2	748	538	141	69	666	47	270	291	58	78	4	32.1
1968....	1,192	408	353	49	6	784	528	196	60	580	44	131	305	100	202	2	37.3
1969....	1,764	864	767	88	9	900	511	252	137	544	60	135	261	88	350	6	36.3
1970....	2,833	1,806	1,570	222	14	1,027	570	321	136	450	53	144	208	45	572	5	33.3
1971....	2,973	1,937	1,701	217	19	1,036	590	350	96	377	79	140	129	29	650	9	29.1
1972....	4,906	3,264	2,937	294	33	1,642	934	578	130	458	199	120	123	16	1,178	6	22.0
1973....	3,495	2,518	2,338	137	43	977	631	253	93	260	146	66	41	7	707	10	17.5
1974....	2,094	1,295	1,196	73	26	799	643	114	42	155	95	33	27	-	637	7	14.9
1975....	1,376	1,147	1,133	10	4	229	171	38	20	20	13	4	3	-	203	6	-
1976...	496	373	362	4	7	123	105	13	5	13	5		6	1	109	1	-
1977....	2,175	2,146	2,142	2	2	29	24	3	2	4	2	1	1	-	23	2	-

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[1] Includes sentences of more than 6 months which are to be followed by a term of probation (mixed sentences).

[2] Includes split sentences where a defendant receives a sentence on a one-count indictment of 6 months or less in a jail type institution, followed by a term of probation, 18 U.S.C. 3651. Included in these figures are mixed sentences involving confinement for 6 months or less on one count, to be followed by a term of probation on one or more other counts.

[3] Average sentence is not computed where the number of defendants sentenced to prison was less than 25.

NOTE: Statistics reflect defendants charged with violation of the Selective Training and Service Act of 1940, Title 50, U.S.C., App. 301-318 and the Universal Military Training and Service Act of 1948, Title 50, U.S.C., App., 451-470. The District of Columbia is excluded from these data through 1973. The territorial courts of the Virgin Islands, Canal Zone and Guam are excluded through 1976.

UNITED STATES DISTRICT COURTS
Disposition of Defendants Charged with Violation of Selective Service Act
Showing Type of Sentence, for the Twelve Month Period Ended June 30, 1945-1977

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		Total	Dis-missed	Acquitted by		Total	Plea of guilty or nolo contendere	Convicted by		Imprisonment¹					Pro-bation	Fine and other	
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1945....	4,287	1,449	1,399	25	25	2,838	1,823	319	696	2,368	438	775	744	411	453	17	31.9
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1958....	325	96	66	26	4	229	154	66	9	190	66	81	42	1	36	3	21.6
1959....	258	56	44	11	1	202	159	39	4	152	46	63	39	4	48	1	23.2
1960....	239	73	65	7	1	166	131	31	4	126	47	48	28	3	37	3	21.9
1961....	244	45	37	8	-	199	160	33	6	141	45	59	35	2	57	1	22.6
1962....	274	49	46	2	1	225	182	31	12	164	50	75	38	3	60	1	21.6
1963....	338	73	66	7	-	265	212	46	7	189	79	65	36	9	74	2	21.9
1964....	276	70	63	6	1	206	161	32	13	146	46	77	22	1	59	1	20.8
1965....	341	99	88	8	3	242	197	28	17	189	64	90	30	3	52	1	21.0
1966....	516	145	132	11	2	371	265	74	32	301	61	128	95	17	64	6	26.4
1967....	996	248	224	22	2	748	538	141	69	666	47	270	291	58	78	4	32.1
1968....	1,192	408	353	49	6	784	520	196	68	580	44	131	301	104	202	2	37.3
1969....	1,744	844	747	88	9	900	511	252	137	544	40	155	261	88	350	6	36.3
1970....	2,833	1,806	1,570	222	14	1,027	570	321	136	450	53	144	208	45	572	9	33.3
1971....	2,973	1,937	1,701	217	19	1,036	590	350	96	377	79	140	129	29	650	9	29.1
1972....	4,906	3,264	2,937	294	33	1,642	934	578	130	458	199	120	123	16	1,178	6	22.0
1973....	3,495	2,518	2,338	137	43	977	631	253	93	260	146	66	41	7	707	10	17.5
1974....	2,094	1,295	1,196	73	26	799	643	114	42	155	107	21	27	-	637	7	14.5
1975....	1,376	1,147	1,133	10	4	229	171	38	20	20	14	4	2	-	203	6	-
1976...	696	573	562	4	7	123	105	13	5	12	5		4	1	108	3	-
1977....	2,175	2,146	2,142	2	2	29	22	5	2	4	3	1	1	-	22	3	-

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[1] Includes sentences of more than 6 months which are to be followed by a term of probation (mixed sentences).

[2] Includes split sentences where a defendant receives a sentence on a one-count indictment of 6 months or less in a jail type institution, followed by a term of probation, 18 U.S.C. 3651. Included in these figures are mixed sentences involving confinement for 6 months or less on one count, to be followed by a term of probation on one or more other counts.

[3] Average sentence is not computed where the number of defendants sentenced to prison was less than 25.

NOTE: Statistics reflect defendants charged with violation of the Selective Training and Service Act of 1940, Title 50, U.S.C., App. 301-318 and the Universal Military Training and Service Act of 1948, Title 50, U.S.C., App., 451-470. The District of Columbia is excluded from these data through 1973. The territorial courts of the Virgin Islands, Canal Zone and Guam are excluded through 1976.

UNITED STATES DISTRICT COURTS
Disposition of Defendants Charged with Violation of Selective Service Act
Showing Type of Sentence, for the Twelve Month Period Ended June 30, 1945-1977

Year	Total defendants	Not convicted				Convicted and Sentenced				Type of Sentence							
		Total	Dis-missed	Acquitted by		Total	Plea of guilty or nolo contendere	Convicted by		Imprisonment¹					Pro-bation	Fine and other	Average sentence of imprisonment (in mos.)³
				Court	Jury			Court	Jury	Total	1 year and 1 day and under	Over 1 year 1 day to 3 years	1-5 years	5 years and over			
1945....	4,287	1,449	1,399	35	25	2,838	1,823	319	696	2,368	438	775	744	411	453	17	31.9
1946....	2,651	999	953	26	20	1,652	1,130	222	300	1,339	547	501	244	47	301	12	20.6
1947....	2,074	937	908	18	11	1,137	898	178	61	775	394	317	61	3	245	117	16.3
1948....	833	529	511	7	11	304	264	11	29	212	133	69	9	1	84	8	16.1
1949....	506	214	202	3	9	292	263	20	9	213	134	62	17	-	73	6	14.6
1950....	449	274	272	1	1	175	156	6	13	109	78	24	6	1	65	1	13.4
1951....	368	212	202	6	4	156	105	24	27	123	35	37	29	22	32	1	29.6
1952....	561	248	222	16	10	313	160	97	56	272	58	77	97	40	39	2	30.5
1953....	630	285	236	39	10	345	185	129	31	280	61	101	84	34	64	1	29.3
1954....	822	398	278	116	4	424	274	105	45	356	78	137	126	15	64	4	36.4
1955....	719	430	367	57	6	289	157	106	26	217	54	105	47	11	70	2	24.8
1956....	371	185	167	16	2	186	109	67	10	123	35	50	35	3	61	2	24.0
1957....	357	95	75	17	3	262	183	70	9	194	60	85	41	8	68	-	23.7
1958....	325	96	66	26	4	229	154	66	9	190	66	81	42	1	36	3	21.6
1959....	258	56	44	11	1	202	159	39	4	152	46	63	39	4	49	1	23.2
1960....	239	73	65	7	1	166	131	31	4	126	47	48	28	3	37	3	21.5
1961....	244	45	37	8	-	199	160	33	6	141	45	59	35	2	57	1	22.6
1962....	274	49	46	2	1	225	182	31	12	164	58	75	28	3	60	1	21.6
1963....	338	73	66	7	-	265	212	46	7	189	79	65	36	9	74	2	21.5
1964....	276	70	63	6	1	206	161	32	13	146	46	77	22	1	59	1	20.8
1965....	341	99	88	8	3	242	197	28	17	189	64	90	30	5	52	1	21.0
1966....	516	145	132	11	2	371	265	74	32	301	61	128	95	17	64	6	26.4
1967....	996	248	224	22	2	748	538	141	69	666	47	270	291	58	78	4	32.1
1968....	1,192	408	353	49	6	784	520	196	68	580	48	131	301	100	202	2	37.3
1969....	1,744	844	747	88	9	900	511	252	137	544	48	155	261	80	350	6	36.3
1970....	2,833	1,806	1,570	222	14	1,027	570	321	136	450	53	144	208	45	572	5	33.3
1971....	2,973	1,937	1,701	217	19	1,036	590	350	96	377	79	140	129	29	650	9	29.1
1972....	4,906	3,264	2,937	294	33	1,642	934	578	130	458	199	120	123	16	1,178	6	22.0
1973....	3,487	2,510	2,330	137	43	977	631	253	93	260	146	66	41	7	707	10	17.5
1974....	2,094	1,295	1,196	73	26	799	643	114	42	155	107	21	27	-	637	7	14.5
1975....	1,376	1,147	1,133	10	4	229	171	38	20	20	14	4	2	-	203	6	-
1976....	696	573	562	4	7	123	105	13	5	12	5		4	1	108	3	-
1977....	2,175	2,146	2,142	2	2	29	22	5	2	4	2	1	1	-	22	3	-

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[1] Includes sentences of more than 6 months which are to be followed by a term of probation (mixed sentences).

[2] Includes split sentences where a defendant receives a sentence on a one-count indictment of 6 months or less in a jail type institution, followed by a term of probation, 18 U.S.C. 3651. Included in these figures are mixed sentences involving confinement for 6 months or less on one count, to be followed by a term of probation on one or more other counts.

[3] Average sentence is not computed where the number of defendants sentenced to prison was less than 25.

NOTE: Statistics reflect defendants charged with violation of the Selective Training and Service Act of 1940, Title 50, U.S.C., App. 301-318 and the Universal Military Training and Service Act of 1948, Title 50, U.S.C., App., 451-470. The District of Columbia is excluded from these data through 1973. The territorial courts of the Virgin Islands, Canal Zone and Guam are excluded through 1976.

UNITED STATES DISTRICT COURTS
Disposition of Defendants Charged with Violation of Selective Service Act Showing Type of Sentence, for the Twelve Month Period Ended June 30, 1945-1977

Year	Total defendants	Not convicted: Total	Not convicted: Dis-missed	Acquitted by: Court	Acquitted by: Jury	Convicted and Sentenced: Total	Plea of guilty or nolo contendere	Convicted by: Court	Convicted by: Jury	Imprisonment¹: Total	1 year and 1 day and under	Over 1 year 1 day to 3 years	3-5 years	5 years and over	Pro-bation²	Fine and other	Average sentence of imprisonment (in mos.)³
1945....	6,207	1,609	1,399	25	25	[illegible]	1,821	119	176	2,360	430	775	700	461	653	17	31.9
1946....	2,051	599	951	25	20	[illegible]	1,150	222	180	1,135	507	522	280	47	335	12	20.0
1947....	2,070	917	900	10	11	[illegible]	870	170	61	775	200	317	61	3	305	117	30.1
1948....	833	529	511	7	11	304	268	11	20	232	131	60	9	1	[illegible]	6	30.1
1949....	580	256	202	5	9	292	263	20	9	213	136	60	17	-	73	6	30.0
1950....	480	270	272	1	1	175	170	6	13	105	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	13.0
1951....	398	212	202	6	4	156	105	20	27	123	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	29.0
1952....	561	240	222	16	10	313	180	97	15	272	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	30.5
1953....	638	285	235	20	10	365	195	120	31	280	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	29.1
1954....	622	290	270	100	6	400	190	105	60	250	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	30.4
1955....	710	430	357	57	6	280	157	106	26	217	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	30.0
1956....	371	180	157	16	2	185	100	67	10	123	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	24.0
1957....	357	95	75	17	3	262	183	70	9	190	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	23.7
1958....	325	96	65	26	5	229	156	68	6	190	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	21.0
1959....	288	58	48	13	1	202	150	50	6	150	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	23.0
1960....	230	73	60	7	1	188	131	51	6	135	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	21.5
1961....	245	45	37	8	-	198	160	51	6	101	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	22.0
1962....	274	60	48	2	1	225	182	51	12	150	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	21.8
1963....	338	73	68	7	-	265	212	48	7	180	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	21.5
1964....	276	70	63	6	1	206	161	52	13	140	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	30.8
1965....	341	98	80	8	3	242	207	28	17	195	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	30.0
1966....	535	143	132	11	2	371	263	78	30	201	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	30.4
1967....	996	248	224	22	2	748	538	101	60	388	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	30.1
1968....	1,192	408	353	49	6	784	500	195	88	455	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	30.1
1969....	1,744	844	787	48	9	888	511	252	137	488	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	30.1
1970....	2,833	1,806	1,570	227	16	[illegible]	570	321	136	480	53	144	288	65	370	0	33.3
1971....	2,973	1,937	1,701	217	19	[illegible]	980	350	96	377	70	140	120	25	950	9	30.1
1972....	4,906	2,704	2,037	206	33	[illegible]	938	570	130	450	100	130	123	16	1,178	8	30.0
1973....	3,005	2,510	2,398	117	43	977	631	253	93	280	140	66	61	7	707	10	17.5
1974....	2,080	1,205	1,196	73	26	790	667	114	42	155	107	21	32	-	637	7	16.5
1975....	1,176	1,167	1,133	30	4	220	171	38	20	20	13	6	3	-	383	6	-
1976....	498	573	562	4	7	123	105	11	1	12	4	-	1	-	188	3	-
1977....	2,175	2,146	2,142	2	2	20	22	1	2	4	2	1	1	-	20	3	-

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[1] Includes sentences of more than 6 months which are to be followed by a term of probation (mixed sentences).

[2] Includes split sentences where a defendant receives a sentence on a one-count indictment of 6 months or less in a jail type institution, followed by a term of probation, 18 U.S.C. 3651. Included in these figures are mixed sentences involving confinement for 6 months or less on one count, to be followed by a term of probation on one or more other counts.

[3] Average sentence is not computed where the number of defendants sentenced to prison was less than 25.

NOTE: Statistics reflect defendants charged with violation of the Selective Training and Service Act of 1940, Title 50, U.S.C., App. 301-318 and the Universal Military Training and Service Act of 1948, Title 50, U.S.C., App., 451-470. The District of Columbia is excluded from these data through 1973. The territorial courts of the Virgin Islands, Canal Zone and Guam are excluded through 1976.

UNITED STATES DISTRICT COURTS
Disposition of Defendants Charged with Violation of Selective Service Act
Showing Type of Sentence for the Twelve Month Period Ended June 30, 1945-1977

Year	Total defendants	Not convicted: Total	Dismissed	Acquitted by Court	Acquitted by Jury	Convicted and sentenced: Total	Plea of guilty or nolo contendere	Convicted by Court	Convicted by Jury	Imprisonment¹: Total	1 year and 1 day and under	Over 1 year 1 day to 3 years	3-5 years	5 years and over	Probation	Fine and other	Average sentence of imprisonment (in mos.)³
1945....	4,207	1,449	1,399	25	25	2,838	1,821	319	698	2,268	438	770	748	311	553	17	31.9
1946....	2,652	999	951	28	20	1,652	1,130	222	300	1,100	547	301	188	67	301	12	20.6
1947....	2,070	937	916	10	11	1,137	938	138	61	770	368	317	83	2	250	117	16.3
1948....	833	529	511	7	11	304	273	11	20	212	133	69	9	1	86	6	16.1
1949....	505	214	202	3	9	292	263	20	9	213	134	62	17	-	73	6	16.0
1950....	405	276	272	1	1	175	155	6	13	100	70	25	6	1	65	1	13.0
1951....	380	212	202	6	4	156	105	24	27	133	75	19	23	22	32	1	29.6
1952....	561	240	222	16	10	313	180	97	90	270	98	77	67	40	30	2	30.5
1953....	610	285	216	59	10	365	185	129	31	280	61	155	85	36	64	1	29.7
1954....	822	390	236	150	4	426	198	185	45	300	70	137	126	15	66	6	26.4
1955....	719	610	367	57	6	209	157	106	20	217	54	100	67	11	70	2	26.8
1956....	371	185	167	16	2	186	109	67	10	123	75	98	35	3	61	2	24.0
1957....	357	95	75	17	3	262	183	70	9	198	60	85	62	8	68	-	23.7
1958....	325	96	66	20	6	229	156	66	9	190	66	81	52	1	56	3	21.6
1959....	258	56	44	11	1	202	159	38	4	182	66	83	55	4	48	1	23.0
1960....	239	73	65	7	1	166	131	31	7	130	47	48	28	3	33	3	21.5
1961....	206	65	57	8	-	199	160	33	6	131	65	59	35	2	57	1	22.0
1962....	276	69	60	2	1	225	182	31	12	184	55	70	38	3	68	3	21.6
1963....	438	73	66	7	-	205	212	46	7	180	75	65	35	5	74	2	21.5
1964....	276	70	63	6	1	206	161	32	13	140	66	73	22	4	59	1	20.8
1965....	341	99	88	8	3	242	197	28	17	169	64	80	30	5	52	1	21.0
1966....	536	165	132	11	2	371	285	74	32	301	61	188	85	17	64	6	26.0
1967....	998	248	224	22	2	748	538	141	69	466	67	250	191	50	78	4	32.1
1968....	1,192	400	351	40	6	784	520	196	68	580	68	131	281	100	202	2	37.3
1969....	1,744	844	767	80	9	900	511	252	137	544	40	155	251	88	280	6	36.1
1970....	2,833	1,806	1,570	222	14	1,027	570	321	136	450	53	164	200	40	572	5	33.3
1971....	2,973	1,937	1,701	217	19	1,036	590	350	96	377	70	180	129	29	600	9	29.1
1972....	4,906	3,264	2,937	296	31	1,642	936	576	130	658	105	120	123	16	1,170	6	22.0
1973....	3,495	2,518	2,338	137	43	977	631	253	93	300	146	63	41	7	707	10	17.5
1974....	2,094	1,295	1,196	73	26	799	645	114	42	195	107	31	37	-	637	7	16.5
1975....	1,378	1,167	1,133	10	6	229	171	38	20	20	14	4	2	-	201	8	-
1976....	696	573	562	4	7	123	105	13	5	13	5	-	4	1	108	3	-
1977....	2,135	2,106	2,102	2	2	29	22	5	2	4	2	1	1	-	22	3	-

¹Includes sentences of more than 6 months which are to be followed by a term of probation (mixed sentences).

²Includes split sentences where a defendant receives a sentence on a one-count indictment of 6 months or less in a jail type institution, followed by a term of probation, 18 U.S.C. 3651. Included in these figures are mixed sentences involving confinement for 6 months or less on one count, to be followed by a term of probation on one or more other counts.

³Average sentence is not computed where the number of defendants sentenced to prison was less than 25.

NOTE: Statistics reflect defendants charged with violation of the Selective Training and Service Act of 1940, Title 50, U.S.C., App. 301-318 and the Universal Military Training and Service Act of 1948, Title 50, U.S.C., App., 451-470. The District of Columbia is excluded from these data through 1973. The territorial courts of the Virgin Islands, Canal Zone and Guam are excluded through 1976.

ORIGINAL CRIMINAL CASES COMMENCED IN THE U. S. DISTRICT COURTS FOR VIOLATION OF THE SELECTIVE SERVICE ACT DURING THE TWELVE MONTH PERIODS ENDED JUNE 30, 1966 THRU 1975. (EXCLUDES TRANSFERS).

Circuit and District	1966	1967	1968	1969	1970	1971	1972	1973	1974	1975
Total	863	1,335	1,826	3,305	3,712	4,539	5,142	3,061	1,808	274
District of Columbia	1	3	4	2	3	4	1	-	-	3
First Circuit	19	61	67	168	52	187	111	123	86	64
Maine	1	6	8	19	19	73	10	20	1	-
Massachusetts	13	36	15	49	-	85	54	80	84	63
New Hampshire	-	3	15	21	30	27	20	10	2	-
Rhode Island	-	11	7	6	3	1	-	-	-	-
Puerto Rico	5	5	22	73	-	1	27	13	-	1
Second Circuit	83	111	148	355	176	139	696	524	160	87
Connecticut	8	8	16	83	39	23	35	25	8	39
New York, N.	5	8	6	37	14	4	89	45	17	-
E.	43	53	67	48	73	20	241	87	19	2
S.	26	25	30	72	21	47	262	126	54	30
W.	-	11	21	110	24	41	22	241	59	16
Vermont	1	6	8	5	5	4	7	-	3	-
Third Circuit	46	116	140	312	354	353	309	245	93	41
Delaware	-	7	9	21	9	1	3	2	-	-
New Jersey	22	54	55	88	56	82	53	133	49	29
Pennsylvania, E.	12	30	42	54	140	163	156	57	12	3
M.	3	9	10	39	47	27	31	29	15	1
W.	9	16	24	108	101	80	64	22	15	8
Virgin Islands	-	-	-	2	1	-	2	2	2	-
Fourth Circuit	55	140	129	236	193	281	287	119	65	8
Maryland	13	35	44	75	51	54	64	23	7	-
North Carolina, E.	3	6	5	21	18	52	68	22	13	1
M.	3	11	3	10	10	7	26	12	5	-
W.	6	6	15	25	11	16	27	13	10	1
South Carolina	10	15	13	15	20	12	28	13	10	1
Virginia, E.	14	32	31	57	55	117	45	29	12	-
W.	3	8	2	10	8	8	8	4	4	5
West Virginia, N.	3	16	12	10	13	10	5	2	1	-
S.	-	11	4	13	7	5	16	1	3	-
Fifth Circuit	118	159	182	304	346	381	336	211	108	16
Alabama, N.	13	5	11	9	6	8	20	-	5	-
M.	3	5	7	8	15	13	18	9	4	-
S.	2	-	2	9	2	3	1	11	5	3
Florida, N.	4	2	12	11	17	17	9	1	-	-
M.	18	35	30	42	51	64	57	56	21	5
S.	4	12	21	27	22	70	27	13	26	2
Georgia, N.	17	25	26	35	32	26	37	24	26	-
M.	3	5	1	4	4	7	3	6	2	-
S.	4	7	3	3	12	9	15	9	1	-
Louisiana, E.	12	8	1	3	10	27	22	8	1	1
M.	-	-	-	-	-	-	4	1	-	-
W.	2	1	5	6	30	49	14	7	-	-
Mississippi, N.	3	8	3	4	6	3	4	10	2	1
S.	2	9	6	5	7	5	4	1	1	-
Texas, N.	9	5	16	40	29	17	25	17	1	-
E.	3	3	2	23	6	4	13	1	2	2
S.	4	14	17	43	57	23	12	26	-	-
W.	17	15	17	32	38	34	51	10	8	2
Canal Zone	-	-	-	-	-	-	-	1	1	-

ORIGINAL CRIMINAL CASES COMMENCED IN THE U. S. DISTRICT COURTS FOR VIOLATION OF[1] THE SELECTIVE SERVICE ACT DURING THE TWELVE MONTH PERIODS ENDED JUNE 30, 1966 THRU 1975. (EXCLUDES TRANSFERS).

Circuit and District	1966	1967	1968	1969	1970	1971	1972	1973	1974	1975
Sixth Circuit	50	150	198	296	385	454	817	657	109	8
Kentucky, E........	2	4	4	11	13	11	8	1	3	-
W........	2	14	8	11	11	8	25	8	3	-
Michigan, E........	7	25	50	44	155	149	327	423	67	5
W........	6	14	19	42	69	49	93	77	15	1
Ohio, N............	21	61	58	93	31	153	258	111	5	1
S............	8	23	28	67	68	56	79	25	8	1
Tennessee, E........	3	2	6	3	13	7	2	5	2	-
M........	-	3	9	11	14	9	11	2	-	-
W........	1	4	6	14	11	12	14	5	5	-
Seventh Circuit	71	76	174	284	376	544	330	310	65	5
Illinois, N........	20	17	57	115	167	217	122	88	51	2
C........	-	2	8	17	19	39	15	23	1	-
S........	9	7	12	14	30	55	37	12	2	-
Indiana, N.	7	5	20	19	48	58	37	21	7	1
S.	5	18	32	30	24	77	56	38	1	-
Wisconsin, E........	21	20	33	52	48	50	33	121	-	2
W........	1	7	12	7	40	48	30	7	3	-
Eighth Circuit	32	58	135	204	303	390	540	109	33	13
Arkansas, E........	2	7	7	8	20	8	13	8	2	1
W........	1	2	5	6	3	4	3	1	5	-
Iowa, N............	1	3	6	12	9	10	13	3	5	2
S............	3	6	15	12	18	55	15	16	2	-
Minnesota	-	1	15	62	96	139	387	49	8	7
Missouri, E........	5	12	25	30	41	46	12	5	1	-
W........	16	22	47	33	61	47	31	16	5	1
Nebraska	1	1	6	13	27	40	28	7	3	-
North Dakota	2	2	4	20	13	21	32	1	-	1
South Dakota	1	2	5	8	15	20	6	3	-	1
Ninth Circuit	145	365	551	1,013	1,313	1,634	1,586	679	271	27
Alaska	1	-	4	8	11	12	13	4	4	-
Arizona	3	3	17	17	38	177	60	14	9	-
California, N......	19	40	131	282	259	511	661	139	40	10
E......	1	45	36	77	60	73	140	66	82	6
C......	1	154	231	399	553	568	465	307	79	2
S......	66	13	19	20	73	65	20	17	4	4
Hawaii	-	3	3	14	6	-	10	28	2	2
Idaho	-	3	7	23	12	6	7	2	-	-
Montana	1	5	12	12	13	35	8	-	3	-
Nevada	4	10	9	10	9	6	10	3	1	-
Oregon	22	70	57	84	151	59	93	37	4	-
Washington, E......	2	6	5	12	43	35	14	12	6	-
W......	7	13	20	54	85	87	83	50	30	2
Guam	-	-	-	-	-	-	2	-	-	1
Tenth Circuit	43	96	98	161	211	172	161	66	18	2
Colorado	14	44	50	95	92	76	99	36	9	1
Kansas	9	10	12	17	38	26	29	11	6	-
New Mexico	1	-	6	10	18	16	11	5	2	-
Oklahoma, N........	2	6	1	1	7	7	-	1	1	-
E........	1	2	2	3	3	2	-	1	-	-
W........	5	17	22	21	33	36	14	11	-	-
Utah	1	7	3	9	3	2	7	1	-	-
Wyoming...........	10	7	2	4	17	7	1	-	-	1

(1). The Middle District of Louisiana was created by Public Law 92-208, approved December 18, 1971, and effective April 16, 1972.

ORIGINAL CRIMINAL CASES COMMENCED IN THE U. S. DISTRICT COURTS FOR VIOLATION OF THE SELECTIVE SERVICE ACT DURING THE TWELVE MONTH PERIODS ENDED JUNE 30, 1966 THRU 1975. (INCLUDES TRANSFERS).

Circuit and District	1966	1967	1968	1969	1970	1971	1972	1973	1974	1975
Total	663	1,335	1,826	3,305	3,712	4,539	5,142	3,043	1,008	274
District of Columbia	1	3	4	2	3	4	1	-	-	3
First Circuit	19	61	67	168	52	187	111	123	86	64
Maine	1	6	8	19	19	73	10	20	1	-
Massachusetts	13	36	15	49	-	85	54	80	84	63
New Hampshire	-	3	15	21	30	27	20	10	1	-
Rhode Island	-	11	7	6	3	1	-	-	-	-
Puerto Rico	5	5	22	73	-	1	27	13	-	1
Second Circuit	83	111	148	355	176	139	656	524	160	87
Connecticut	8	8	16	83	39	23	35	25	8	39
New York, N.	5	8	6	37	14	4	89	45	17	-
E.	43	53	67	48	73	20	241	87	19	2
S.	26	25	30	72	21	47	262	126	54	30
W.	-	11	21	110	24	41	22	241	59	16
Vermont	1	6	8	5	5	4	7	-	3	-
Third Circuit	46	116	140	312	354	353	309	245	93	41
Delaware	-	7	9	21	9	1	3	2	-	-
New Jersey	22	54	55	88	56	82	53	133	49	29
Pennsylvania, E.	12	30	42	54	140	163	156	57	12	3
M.	3	9	10	39	47	27	31	29	15	1
W.	9	16	24	108	101	80	64	22	15	8
Virgin Islands	-	-	-	2	1	-	2	2	2	-
Fourth Circuit	55	140	129	236	193	281	287	119	65	8
Maryland	13	35	44	75	51	54	64	23	7	-
North Carolina, E.	3	6	5	21	18	52	68	22	13	1
M.	3	11	3	10	10	7	26	12	5	-
W.	6	6	15	25	11	16	27	13	10	1
South Carolina	10	15	13	15	20	12	28	13	10	1
Virginia, E.	14	32	31	57	55	117	45	29	12	-
W.	3	8	2	10	8	8	8	4	4	5
West Virginia, N.	3	16	12	10	13	10	5	2	1	-
S.	-	11	4	13	7	5	16	1	3	-
Fifth Circuit	118	159	182	304	346	381	336	211	108	16
Alabama, N.	13	5	11	9	6	8	20	-	5	-
M.	3	5	7	8	15	13	18	9	4	-
S.	2	-	2	9	2	3	1	11	5	1
Florida, N.	4	2	12	11	17	17	9	1	-	-
M.	18	35	30	42	53	66	57	56	21	5
S.	4	12	21	27	22	70	27	13	26	2
Georgia, N.	17	25	26	35	32	26	37	24	26	-
M.	3	5	1	4	4	7	3	6	2	-
S.	4	7	3	3	12	9	15	9	1	-
Louisiana, E.	12	8	3	3	10	27	22	8	1	1
M(1)	-	-	-	-	-	-	4	1	-	-
W.	2	1	5	6	30	49	14	7	-	-
Mississippi, N.	3	8	3	4	6	3	4	10	2	1
S.	2	9	6	5	7	5	4	1	3	-
Texas, N.	9	5	16	40	29	17	25	17	1	-
E.	1	3	2	23	6	4	13	1	2	2
S.	4	14	17	43	57	23	12	26	-	-
W.	17	15	17	32	38	34	51	10	8	2
Canal Zone	-	-	-	-	-	-	-	1	1	-

(1) The Middle District of Louisiana was created [illegible]

ORIGINAL CRIMINAL CASES COMMENCED IN THE U. S. DISTRICT COURTS FOR VIOLATION OF THE SELECTIVE SERVICE ACT DURING THE TWELVE MONTH PERIODS ENDED JUNE 30, 1966 THRU 1975. (EXCLUDES TRANSFERS).

Circuit and District	1966	1967	1968	1969	1970	1971	1972	1973	1974	1975
Sixth Circuit	50	150	198	296	385	454	817	657	109	8
Kentucky, E.	2	4	4	11	13	11	8	1	3	-
W.	2	14	8	11	11	8	25	8	3	-
Michigan, E.	7	25	58	44	155	149	327	423	67	5
W.	6	14	19	42	69	49	93	77	16	1
Ohio, N.	21	61	58	93	31	153	258	111	5	1
S.	8	23	20	67	68	56	79	25	8	1
Tennessee, E.	3	2	6	3	13	7	2	5	2	-
M.	-	3	9	11	14	9	11	2	-	-
W.	1	4	8	14	11	12	14	5	5	-
Seventh Circuit	71	76	174	254	376	544	338	310	65	5
Illinois, N.	28	17	57	115	167	217	122	88	51	2
C.	-	2	8	17	19	39	15	23	1	-
S.	9	7	12	14	30	55	37	12	2	-
Indiana, N.	7	5	20	19	48	58	37	21	7	1
S.	5	18	32	30	24	77	56	38	1	-
Wisconsin, E.	21	20	33	52	48	50	33	121	-	2
W.	1	7	12	7	40	48	38	7	3	-
Eighth Circuit	32	58	135	204	303	390	540	109	33	13
Arkansas, E.	2	7	7	8	20	8	13	8	2	1
W.	1	2	5	6	3	4	3	1	5	-
Iowa, N.	1	3	6	12	9	10	13	3	5	2
S.	3	6	15	12	18	55	15	16	2	-
Minnesota	-	1	15	62	96	139	387	49	8	7
Missouri, E.	5	12	25	30	41	46	12	5	3	-
W.	16	22	47	33	61	47	31	16	5	1
Nebraska	1	1	6	13	27	40	28	7	3	-
North Dakota	2	2	4	20	13	21	32	1	-	1
South Dakota	1	2	5	8	15	20	6	3	-	1
Ninth Circuit	145	365	551	1,013	1,313	1,634	1,586	679	271	27
Alaska	1	-	4	8	11	12	13	4	4	-
Arizona	3	3	17	17	38	177	60	14	9	-
California, N.	39	40	131	282	259	511	661	139	40	10
E.	1	45	36	77	80	73	140	66	83	6
C.	1	154	231	399	553	568	465	307	79	2
S.	66	13	19	20	73	65	20	17	4	4
Hawaii	-	3	3	14	6	-	10	28	2	2
Idaho	-	3	7	23	12	6	7	2	-	-
Montana	1	5	12	12	13	35	8	-	8	-
Nevada	4	10	9	10	9	6	10	3	1	-
Oregon	22	70	57	84	151	59	93	37	4	-
Washington, E.	2	6	5	12	43	35	14	12	6	-
W.	7	13	20	54	65	87	83	50	30	2
Guam	-	-	-	-	-	-	2	-	-	1
Tenth Circuit	43	96	98	161	211	172	161	66	18	2
Colorado	14	44	50	95	92	76	99	36	9	1
Kansas	9	18	12	17	38	26	29	11	6	-
New Mexico	1	-	6	10	18	16	11	5	2	-
Oklahoma, N.	2	6	1	1	7	7	-	1	1	-
E.	1	2	2	4	3	2	-	1	-	-
W.	5	12	22	21	33	36	14	11	-	-
Utah	1	7	3	9	3	2	7	1	-	-
Wyoming	10	7	2	4	17	7	1	-	-	1

(1). The Middle District of Louisiana was created by Public Law 92-208, approved December 18, 1971, and effective April 16, 1972.

ORIGINAL CRIMINAL CASES COMMENCED IN THE U. S. DISTRICT COURTS FOR VIOLATION OF THE SELECTIVE SERVICE ACT DURING THE TWELVE MONTH PERIODS ENDED JUNE 30, 1966 THRU 1975. (EXCLUDES TRANSFERS).

Circuit and District	1966	1967	1968	1969	1970	1971	1972	1973	1974	1975
Total	663	1,335	1,826	3,305	3,712	4,539	5,142	3,043	1,008	274
District of Columbia	1	3	4	2	3	4	1	-	-	3
First Circuit	19	61	67	168	52	187	111	123	86	64
Maine	1	6	8	19	19	73	10	20	1	-
Massachusetts	13	36	15	49	-	85	54	80	84	63
New Hampshire	-	3	15	21	30	27	20	10	1	-
Rhode Island	-	11	7	6	3	1	-	-	-	-
Puerto Rico	5	5	22	73	-	1	27	13	-	1
Second Circuit	83	111	148	355	176	139	656	524	160	87
Connecticut	8	8	16	83	39	21	39	25	8	39
New York, N.	3	8	6	37	14	4	80	45	17	-
E.	43	53	67	48	73	20	241	87	19	2
S.	28	25	30	72	21	47	267	126	54	30
W.	-	11	21	110	24	41	22	241	59	16
Vermont	1	6	8	5	5	4	7	-	3	-
Third Circuit	46	116	140	312	354	353	309	245	93	41
Delaware	-	7	9	21	9	1	3	2	-	-
New Jersey	22	58	55	88	56	82	53	133	49	29
Pennsylvania, E.	12	30	42	54	140	163	156	57	12	3
M.	3	5	10	39	47	27	31	29	15	1
W.	9	16	24	108	101	80	64	22	15	8
Virgin Islands	-	-	-	2	1	-	2	2	2	-
Fourth Circuit	58	140	129	236	193	261	307	119	65	8
Maryland	13	35	44	75	51	54	64	33	7	-
North Carolina, E.	3	6	5	21	18	52	68	32	13	1
M.	3	11	3	10	10	7	26	12	5	-
W.	6	6	15	25	11	16	27	13	10	1
South Carolina	10	15	13	15	20	12	28	13	10	1
Virginia, E.	14	32	31	52	55	117	45	29	12	-
W.	3	8	2	10	8	3	8	4	4	3
West Virginia, N.	3	16	12	10	11	10	5	2	1	-
S.	-	11	4	18	7	5	16	1	3	-
Fifth Circuit	118	159	182	304	346	381	336	211	100	16
Alabama, N.	13	8	11	9	6	8	20	-	5	-
M.	3	8	7	8	15	13	18	9	4	-
S.	2	-	2	9	2	1	1	11	3	1
Florida, N.	6	3	12	11	12	17	9	-	-	-
M.	11	15	20	42	63	65	57	31	21	3
S.	4	12	21	27	22	20	27	11	23	2
Georgia, N.	17	25	26	15	32	26	37	24	25	-
M.	3	3	1	4	4	3	3	4	3	-
S.	4	7	1	3	12	9	15	3	1	-
Louisiana, E.	12	8	3	3	10	27	22	8	1	1
Mdl.	-	-	-	-	-	-	4	1	-	-
W.	2	1	9	6	30	49	14	2	-	-
Mississippi, N.	3	8	3	6	6	3	4	10	2	1
S.	2	6	6	3	5	2	4	1	1	-
Texas, N.	9	3	16	60	23	17	25	17	1	-
E.	1	1	2	22	6	4	11	1	2	2
S.	4	14	17	63	37	23	12	26	-	-
W.	17	15	17	32	38	34	31	10	1	2
Canal Zone	-	-	-	-	-	-	-	1	1	-

ORIGINAL CRIMINAL CASES COMMENCED IN THE U. S. DISTRICT COURTS FOR VIOLATION OF THE SELECTIVE SERVICE ACT DURING THE TWELVE MONTH PERIODS ENDED JUNE 30, 1966 THRU 1975. (EXCLUDES TRANSFERS).

Circuit and District	1966	1967	1968	1969	1970	1971	1972	1973	1974	1975
Sixth Circuit	50	150	190	296	385	456	817	657	109	8
Kentucky, E.	2	4	4	11	13	11	8	1	3	-
W.	2	11	8	11	11	8	25	8	3	-
Michigan, E.	7	25	38	48	155	149	327	423	67	5
W.	6	14	19	42	69	49	93	77	16	1
Ohio, N.	21	61	58	93	31	153	258	111	5	1
S.	8	23	28	67	68	58	79	25	8	1
Tennessee, E.	3	2	6	3	13	7	2	5	2	-
M.	-	3	9	11	14	9	11	2	-	-
W.	1	4	8	14	11	12	14	5	5	-
Seventh Circuit	71	76	174	254	376	544	338	310	65	5
Illinois, N.	28	17	57	115	167	217	122	88	51	2
C.	-	2	8	17	19	19	15	23	1	-
S.	9	7	12	14	30	35	37	12	2	-
Indiana, N.	7	5	20	19	48	58	37	21	7	1
S.	5	18	32	38	24	77	56	38	1	-
Wisconsin, E.	21	20	33	52	48	90	33	121	-	2
W.	1	7	12	7	40	48	38	7	3	-
Eighth Circuit	32	58	135	206	303	390	540	109	33	13
Arkansas, E.	2	7	7	8	20	8	13	8	2	1
W.	1	3	3	6	3	4	3	1	5	-
Iowa, N.	1	3	5	12	9	10	13	3	5	2
S.	1	6	15	12	18	35	15	16	2	-
Minnesota	-	1	15	62	96	139	387	49	8	7
Missouri, E.	5	12	25	30	41	46	12	5	1	-
W.	16	22	47	33	61	67	31	16	5	1
Nebraska	1	1	6	13	27	40	29	7	3	-
North Dakota	2	2	4	20	13	21	32	1	-	1
South Dakota	1	2	5	8	15	20	6	3	-	1
Ninth Circuit	145	365	551	1,013	1,313	1,634	1,586	679	271	27
Alaska	1	-	4	8	11	12	13	4	4	-
Arizona	3	3	17	17	38	177	60	14	9	-
California, N.	33	40	131	282	259	511	661	139	40	10
E.	1	45	36	77	80	73	140	66	82	6
C.	1	154	231	399	553	568	465	307	79	2
S.	56	11	19	20	73	65	20	17	4	4
Hawaii	-	3	4	14	6	-	10	28	2	2
Idaho	-	3	7	24	12	6	7	2	-	-
Montana	1	5	12	12	13	35	8	-	8	-
Nevada	4	10	9	10	9	6	10	3	1	-
Oregon	22	70	57	84	151	55	93	37	4	-
Washington, E.	2	6	5	12	41	35	14	12	6	-
W.	7	13	20	58	55	87	33	50	30	2
Guam	-	-	-	-	-	-	2	-	-	1
Tenth Circuit	43	96	90	161	211	192	161	66	18	2
Colorado	14	44	30	95	92	76	99	36	9	1
Kansas	9	18	12	17	38	28	29	11	6	-
New Mexico	1	-	6	10	18	18	11	5	2	-
Oklahoma, N.	2	5	1	3	2	2	-	1	1	-
E.	1	2	2	4	3	2	-	1	-	-
W.	5	12	22	21	33	32	14	11	-	-
Utah	1	7	3	9	3	2	7	1	-	-
Wyoming	10	7	2	4	17	7	1	-	-	2

(1). The Middle District of Louisiana was created by Public Law 92-208, approved December 18, 1971, and effective April 16, 1972.

ORIGINAL CRIMINAL CASES COMMENCED IN THE U. S. DISTRICT COURTS FOR VIOLATION OF THE SELECTIVE SERVICE ACT DURING THE TWELVE MONTH PERIODS ENDED JUNE 30, 1966 THRU 1975. (INCLUDES TRANSFERS).

Circuit and District	1966	1967	1968	1969	1970	1971	1972	1973	1974	1975
Total	663	1,335	1,826	3,305	3,712	4,539	5,142	3,043	1,008	274
District of Columbia	1	3	4	2	3	4	1	-	-	3
First Circuit	19	61	67	168	52	187	111	123	86	64
Maine	1	6	8	19	19	73	10	20	1	-
Massachusetts	13	36	15	49	-	85	54	80	84	63
New Hampshire	-	3	15	21	30	27	20	10	1	-
Rhode Island	-	11	7	6	3	1	-	-	-	-
Puerto Rico	5	5	22	73	-	1	27	13	-	1
Second Circuit	83	111	148	355	176	139	656	524	160	87
Connecticut	8	8	16	83	39	23	35	25	8	39
New York, N.	5	8	6	37	14	4	89	45	17	-
E.	43	53	67	48	73	20	241	87	19	2
S.	26	25	30	72	21	47	262	126	54	30
W.	-	11	21	110	24	41	22	241	59	16
Vermont	1	6	8	5	5	4	7	-	3	-
Third Circuit	46	116	140	312	354	353	309	245	93	41
Delaware	-	7	9	21	9	1	3	2	-	-
New Jersey	22	54	55	88	56	82	53	133	49	29
Pennsylvania, E.	12	30	42	54	140	163	156	57	12	3
M.	3	9	10	39	47	27	31	29	15	1
W.	9	16	24	108	101	80	64	22	15	8
Virgin Islands	-	-	-	2	1	-	2	2	2	-
Fourth Circuit	55	140	129	236	193	281	287	119	65	8
Maryland	13	35	44	75	51	54	64	23	7	-
North Carolina, E.	3	6	5	21	18	52	68	22	13	1
M.	3	11	3	10	10	7	26	12	5	-
W.	6	6	15	25	11	16	27	13	10	1
South Carolina	10	15	13	15	20	12	28	13	10	1
Virginia, E.	14	32	31	57	55	117	45	29	12	-
W.	3	8	2	10	8	8	8	4	4	5
West Virginia, N.	3	16	12	10	13	10	5	2	1	-
S.	-	11	4	13	7	5	16	1	3	-
Fifth Circuit	118	159	182	304	346	381	336	211	108	16
Alabama, N.	13	5	11	9	6	8	20	-	5	-
M.	3	5	7	8	15	13	18	9	4	-
S.	2	-	2	9	2	3	1	11	5	3
Florida, N.	4	2	12	11	17	17	9	1	-	-
M.	18	35	30	42	53	66	57	56	21	5
S.	4	12	21	27	22	70	27	13	26	2
Georgia, N.	17	25	26	35	32	26	37	24	26	-
M.	3	5	1	4	4	7	3	6	2	-
S.	4	7	3	3	12	9	15	9	1	-
Louisiana, E.	12	8	3	3	10	27	22	8	1	1
Mdl.	-	-	-	-	-	-	4	1	-	-
W.	2	1	5	6	30	49	14	7	-	-
Mississippi, N.	3	8	3	4	6	3	4	10	2	1
S.	2	9	6	5	7	5	4	1	3	-
Texas, N.	9	5	16	40	29	17	25	17	1	-
E.	1	3	2	23	6	4	13	1	2	2
S.	4	14	17	43	57	23	12	26	-	-
W.	17	15	17	32	38	34	51	10	8	2
Canal Zone	-	-	-	-	-	-	-	1	1	-

ORIGINAL CRIMINAL CASES COMMENCED IN THE U. S. DISTRICT COURTS FOR VIOLATION OF THE SELECTIVE SERVICE ACT DURING THE TWELVE MONTH PERIODS ENDED JUNE 30, 1966 THRU 1975. (EXCLUDES TRANSFERS).

Circuit and District	1966	1967	1968	1969	1970	1971	1972	1973	1974	1975
Sixth Circuit	50	150	198	296	385	454	817	657	109	8
Kentucky, E.	2	4	4	11	13	11	8	1	3	-
W.	2	14	8	11	11	8	25	8	3	-
Michigan, E.	7	25	58	44	155	149	327	423	67	5
W.	6	14	19	42	69	49	93	77	16	1
Ohio, N.	21	61	58	93	31	153	258	111	5	1
S.	8	23	28	67	68	56	79	25	8	1
Tennessee, E.	3	2	6	3	13	7	2	5	2	-
M.	-	3	9	11	14	9	11	2	-	-
W.	1	4	8	14	11	12	14	5	5	-
Seventh Circuit	71	76	174	254	376	544	338	310	65	5
Illinois, N.	28	17	57	115	167	217	122	88	51	2
C.	-	2	8	17	19	39	15	23	1	-
S.	9	7	12	14	30	55	37	12	2	-
Indiana, N.	7	5	20	19	48	58	37	21	7	1
S.	5	18	32	30	24	77	56	38	1	-
Wisconsin, E.	21	20	33	52	48	50	33	121	-	2
W.	1	7	12	7	40	48	38	7	3	-
Eighth Circuit	32	58	135	204	303	390	540	109	33	13
Arkansas, E.	2	7	7	8	20	8	13	8	2	1
W.	1	2	5	6	3	4	3	1	5	-
Iowa, N.	1	3	6	12	9	10	13	3	5	2
S.	3	6	15	12	18	55	15	16	2	-
Minnesota	-	1	15	62	96	139	387	49	8	7
Missouri, E.	5	12	25	30	41	46	12	5	3	-
W.	16	22	47	33	61	47	31	16	5	1
Nebraska	1	1	6	13	27	40	28	7	3	-
North Dakota	2	2	4	20	13	21	32	1	-	1
South Dakota	1	2	5	8	15	20	6	3	-	1
Ninth Circuit	145	365	551	1,013	1,313	1,634	1,586	679	271	27
Alaska	1	-	4	8	11	12	13	4	4	-
Arizona	3	3	17	17	38	177	60	14	9	-
California, N.	39	40	131	282	259	511	661	139	40	10
E.	1	45	36	77	80	73	140	66	82	6
C.	1	154	231	399	553	568	465	307	79	2
S.	66	13	19	20	73	65	20	17	4	4
Hawaii	-	1	3	14	6	-	10	28	2	2
Idaho	-	3	7	23	12	6	7	2	-	-
Montana	1	5	12	12	13	35	8	-	8	-
Nevada	4	10	9	10	9	6	10	3	3	-
Oregon	22	70	57	84	151	59	93	37	4	-
Washington, E.	2	8	5	12	43	35	14	12	6	-
W.	7	13	20	54	65	87	83	50	30	2
Guam	-	-	-	-	-	-	2	-	-	1
Tenth Circuit	43	96	98	161	211	172	161	66	18	2
Colorado	14	44	50	95	92	76	99	36	8	1
Kansas	9	18	12	17	38	26	29	11	6	-
New Mexico	1	-	6	10	18	16	11	5	2	-
Oklahoma, N.	2	6	1	1	7	7	-	1	1	-
E.	1	2	2	4	3	2	-	1	-	-
W.	5	12	22	21	33	36	14	11	-	-
Utah	1	7	3	9	3	2	7	1	-	-
Wyoming	10	7	2	4	17	7	1	-	-	1

(1). The Middle District of Louisiana was created by Public Law 92-208, approved December 18, 1971, and effective April 16, 1972.

ORIGINAL CRIMINAL CASES COMMENCED IN THE U. S. DISTRICT COURTS FOR VIOLATION OF THE SELECTIVE SERVICE ACT DURING THE TWELVE MONTH PERIODS ENDED JUNE 30, 1966 THRU 1975. (EXCLUDES TRANSFERS).

Circuit and District	1966	1967	1968	1969	1970	1971	1972	1973	1974	1975
Total	663	1,335	1,826	3,305	3,712	4,539	5,142	3,043	1,088	274
District of Columbia	1	3	4	2	3	4	1	-	-	3
First Circuit	19	61	67	168	52	187	111	123	86	64
Maine	1	6	8	19	19	73	10	20	1	-
Massachusetts	13	36	15	49	-	85	54	80	84	63
New Hampshire	-	3	15	21	30	27	20	10	1	-
Rhode Island	-	11	7	6	3	1	-	-	-	-
Puerto Rico	5	5	22	73	-	1	27	13	-	1
Second Circuit	83	111	148	355	176	139	656	524	160	87
Connecticut	8	8	16	83	39	23	35	25	8	39
New York, N.	5	8	6	37	14	4	89	45	37	-
E.	43	53	67	48	73	20	241	87	19	2
S.	26	25	30	72	21	47	262	126	54	30
W.	-	11	21	110	24	41	22	241	39	16
Vermont	1	6	8	5	5	4	7	-	3	-
Third Circuit	46	116	140	312	354	353	309	245	93	41
Delaware	-	7	9	21	9	1	3	2	-	-
New Jersey	22	54	55	88	56	82	53	133	45	29
Pennsylvania, E.	12	30	42	54	140	163	156	57	12	3
M.	3	9	10	39	47	27	31	29	15	1
W.	9	16	24	108	101	80	64	22	15	8
Virgin Islands	-	-	-	2	1	-	2	2	2	-
Fourth Circuit	55	140	129	236	193	281	287	119	66	8
Maryland	13	35	44	75	51	54	64	23	7	-
North Carolina, E.	3	6	5	21	18	52	68	22	13	1
M.	3	11	3	10	10	7	28	12	5	-
W.	6	6	15	25	11	16	27	13	10	1
South Carolina	10	15	13	15	20	12	28	13	10	1
Virginia, E.	14	32	31	57	55	117	45	29	12	-
W.	3	8	2	10	8	8	6	4	4	5
West Virginia, N.	3	16	12	10	11	10	5	2	1	-
S.	-	11	4	13	9	5	16	1	3	-
Fifth Circuit	118	159	182	304	346	381	336	211	108	16
Alabama, N.	13	5	11	9	6	8	20	-	5	-
M.	3	5	7	8	15	13	18	9	4	-
S.	2	-	2	9	2	3	1	11	5	3
Florida, N.	4	2	12	11	17	17	9	1	-	-
M.	18	35	30	42	53	66	57	56	21	5
S.	4	12	21	27	22	70	27	13	26	2
Georgia, N.	17	25	26	35	32	26	37	24	26	-
M.	3	5	1	4	4	7	3	6	2	-
S.	4	7	3	3	12	9	15	9	1	-
Louisiana, E.	12	8	1	3	10	27	22	8	1	1
Mid.	-	-	-	-	-	-	4	1	-	-
W.	2	1	5	6	30	49	14	7	-	-
Mississippi, N.	3	8	1	4	6	3	4	10	2	1
S.	2	9	6	5	7	5	4	1	3	-
Texas, N.	9	5	16	40	29	17	25	17	1	-
E.	1	3	2	23	6	4	13	1	2	2
S.	4	14	17	43	57	23	12	26	-	-
W.	17	15	17	32	38	34	51	10	8	2
Canal Zone	-	-	-	-	-	-	-	1	1	-

ORIGINAL CRIMINAL CASES COMMENCED IN THE U. S. DISTRICT COURTS FOR VIOLATION OF THE SELECTIVE SERVICE ACT DURING THE TWELVE MONTH PERIODS ENDED JUNE 30, 1966 THRU 1975. (EXCLUDES TRANSFERS).

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W.	2	14	8	11	11	8	25	8	3	-
Michigan, E.	7	25	58	44	155	149	327	423	67	5
W.	6	14	19	42	69	49	93	77	16	1
Ohio, N.	21	61	58	93	31	153	258	111	5	1
S.	8	23	21	67	68	56	79	24	1	1
Tennessee, E.	3	2	6	3	13	7	2	5	3	-
M.	-	3	5	11	14	9	11	2	-	-
W.	1	4	8	14	11	12	14	5	5	-
Seventh Circuit	71	76	174	254	376	544	338	310	65	5
Illinois, N.	28	17	57	115	167	227	122	88	51	2
C.	-	2	8	17	19	39	15	23	1	-
S.	9	7	12	14	30	55	37	12	2	-
Indiana, N.	7	5	20	19	48	58	37	21	7	1
S.	5	18	32	30	24	77	56	38	1	-
Wisconsin, E.	21	20	33	52	48	50	33	121	-	2
W.	1	7	12	7	40	48	38	7	3	-
Eighth Circuit	32	58	135	204	303	390	540	109	33	13
Arkansas, E.	2	7	7	8	20	8	13	8	2	1
W.	1	2	5	6	3	4	3	1	5	-
Iowa, N.	1	3	6	12	9	10	12	3	5	2
S.	3	6	15	12	18	35	15	16	2	-
Minnesota	-	1	15	62	96	139	387	49	8	7
Missouri, E.	5	12	25	30	41	46	12	5	1	-
W.	16	22	47	33	61	47	31	16	8	1
Nebraska	1	1	6	13	27	40	28	7	1	-
North Dakota	2	2	4	20	13	21	32	1	-	1
South Dakota	1	2	5	8	15	20	6	3	-	1
Ninth Circuit	145	365	561	1,013	1,313	1,634	1,586	679	271	27
Alaska	1	-	4	8	11	12	13	4	8	-
Arizona	3	3	17	17	38	177	60	14	8	-
California, N.	39	40	141	282	259	511	661	139	30	10
E.	1	45	36	77	80	73	140	66	82	6
C.	1	154	231	399	553	560	465	307	79	2
S.	66	13	19	20	73	65	20	17	4	4
Hawaii	-	3	3	14	6	-	10	28	2	2
Idaho	-	3	7	24	12	6	7	2	-	-
Montana	1	5	12	12	13	35	8	-	8	-
Nevada	4	10	9	10	9	6	10	3	3	-
Oregon	22	70	57	84	151	59	93	37	4	-
Washington, E.	2	6	5	12	43	35	14	12	6	-
W.	7	13	20	54	65	67	83	50	30	2
Guam	-	-	-	-	-	-	2	-	-	1
Tenth Circuit	43	96	98	161	211	172	161	66	18	2
Colorado	14	44	50	95	92	76	99	36	9	1
Kansas	9	18	12	17	38	26	29	11	6	-
New Mexico	1	-	6	10	18	16	11	5	2	-
Oklahoma, N.	2	6	1	1	7	7	-	1	1	-
E.	1	2	2	4	3	2	-	1	-	-
W.	5	12	22	21	33	36	14	11	-	-
Utah	1	7	3	9	3	2	7	1	-	-
Wyoming	10	7	2	4	17	7	1	-	-	1

(1). The Middle District of Louisiana was created by Public Law 92-208, approved December 18, 1971, and effective April 16, 1972.

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Hon. BENJAMIN R. CIVILETTI, MARCH 24, 1980.
Attorney General of the United States,
U.S. Department of Justice,
Washington, D.C.

DEAR MR. ATTORNEY GENERAL: This is to request that the Department of Justice, possibly through the Office for Improvements in the Administration of Justice, do a study of the impact on the Federal courts of the President's program for draft registration. As you know, one of the most important aspects of a registration scheme is the actual prosecution for non-compliance with the law, and the subsequent burden that that will place on the United States district courts, as well as the United States Attorneys offices.

Because this judicial impact statement is of immediate relevance to the Ninety Sixth Congress, I further request that it be submitted to me by April 14, 1980.

Thank you for your assistance on this important issue.

Sincerely,

ROBERT W. KASTENMEIER,
Chairman, Subcommittee on Courts, Civil Liberties and the Administration of Justice.

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U.S. DEPARTMENT OF JUSTICE,
Washington, D.C., May 8, 1980.

Hon. ROBERT W. KASTENMEIER,
Chairman, Subcommittee on Courts, Civil Liberties and the Administration of Justice, House of Representatives, Washington, D.C.

DEAR CHAIRMAN KASTENMEIER: This is in response to your letter to the Attorney General requesting that the Department of Justice conduct a study of the impact of the President's program for draft registration on the federal courts. We are informed that current plans call for a first registration in June of 19 and 20 year olds, followed by a registration in January of 18, 19, and 20 year olds. No final resolution has been achieved with respect to the issue of the registration of women. Furthermore, the possibly imminent passage of the new Criminal Code leaves unsettled what penalties, if any, would apply for failure to register.

It is the policy of the Department of Justice to set priorities and expend resources to study only well-defined problems. Since induction violations, and not registration violations, constituted the bulk of prosecutions in the past, there is little empirical data from which to base an accurate projection of non-compliance, likely penalties, or prosecutorial policy. Because critical factors are indeterminate at this time, we believe that any judicial impact estimates would lack utility or reliability.

We apologize for length of time taken to study your request. If I can be of further assistance please let me know.

Sincerely,

ALAN A. PARKER,
Assistant Attorney General.

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The Deterrent Effect of Legal Sanctions on Draft Evasion*

Alfred Blumstein †
Daniel Nagin ‡

A traditional justification for imposing criminal sanctions is that the imposition of sanctions deters crime.[1] Until quite recently, however, the deterrence hypothesis has been debated largely on ethical or theoretical grounds.[2] Only within the past decade have serious attempts been made to determine empirically if criminal sanctions deter crime.[3]

For a variety of reasons, explored in Section I of this Article, most previous empirical tests of the deterrence hypothesis are open to criticisms that challenge their validity. The lack of persuasive evidence on the deterrence hypothesis is particularly unfortunate in view of the importance of the issue to scholars[4] and to those who directly shape the criminal justice system.[5]

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Points of view or opinions stated in this Article are those of the authors and do not necessarily represent the official position or policies of the U.S. Department of Justice.

The authors' names are listed in alphabetical order.

†B.S. 1951, Ph.D. 1960, Cornell University; Professor and Director of Urban Systems Institute, Carnegie-Mellon University.

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[1] The rationales for imposing criminal sanctions are of two basic types, utilitarian and retributive. H. PACKER, THE LIMITS OF THE CRIMINAL SANCTION 36 (1968). The utilitarian rationales focus on the prevention of crime and include (1) deterrence, which deals with the inhibiting effect on an offender of actual or threatened punishment, (2) rehabilitation, which concerns changing traits, values or skills of the offender to increase conformity to societal norms, and (3) incapacitation, which deals with removing the capability of the offender to commit further crimes. For a survey of contemporary sociological and psychological theories of punishment, see E. SUTHERLAND & D. CRESSEY, CRIMINOLOGY (9th ed. 1974). *See generally* B. WOOTTON, CRIME AND THE CRIMINAL LAW (1963). The retributive rationales are based on the belief that justice demands punishment of the wrongdoers. This philosophy stems from the idea that punishment is appropriate for those who offend other members of society, or from the quasi-religious idea that a criminal can expiate his sins only by being punished. *See, e.g.*, Feinberg, *The Expressive Function of Punishment*, 49 THE MONIST 397 (1965); Hart, *The Aims of the Criminal Law*, 23 LAW & CONTEMP. PROB. 401 (1958). *See generally* A. von Hirsch, DOING JUSTICE (1976).

Kant and Bentham are the precursors to the modern dichotomy of rationales for criminal punishment. J. BENTHAM, AN INTRODUCTION TO THE PRINCIPLES OF MORALS AND LEGISLATION (1879); I. KANT, THE PHILOSOPHY OF LAW (1887 ed.). For an analysis of the differences between Kant and Bentham, see J. MICHAEL & H. WECHSLER, CRIMINAL LAW AND ITS ADMINISTRATION 6-11 (1940). *See generally* E. PINCOFFS, THE RATIONALE OF LEGAL PUNISHMENT (1966). A more modern treatment of the dichotomy of punishment rationales is in Wechsler & Michael, *A Rationale of the Law of Homicide*, 37 COLUM. L. REV. 701 (1937).

Utilitarian rationales dominate modern theory: "Most contemporary forms of retributive theory recognize that any theory of punishment purporting to be relevant to a modern system of criminal law must allot an important place to the utilitarian conception that the institution of criminal punishment is to be justified as a method of preventing harmful crime, even if the mechanism of prevention is fear rather than the reinforcement of moral inhibition." H.L.A. HART, PUNISHMENT AND RESPONSIBILITY 235-36 (1968), *quoted in* F. ZIMRING & G. HAWKINS, DETERRENCE 34 (1973).

[2] *See, e.g.*, Andenaes, *The General Preventive Effects of Punishment*, 114 U. PA. L. REV. 949, 950-51 (1966). *See generally* J. BENTHAM, *supra* note 1; W. BROMBERG, CRIME AND THE MIND (1965); G. ZILBOORG, THE PSYCHOLOGY OF THE CRIMINAL ACT AND PUNISHMENT 27-29 (1954).

[3] The notable exception was T. SELLIN, THE DEATH PENALTY: A REPORT FOR THE MODEL PENAL CODE PROJECT OF THE AMERICAN LAW INSTITUTE, in MODEL PENAL CODE (Tent. Draft No. 9, 1959). References to recent empirical analyses of the deterrence hypothesis are included in note 7 *infra*.

This Article overcomes many limitations of prior analyses of the deterrence hypothesis by selecting for analysis the offense of draft evasion. A number of particular institutional features, discussed in Section II, make the crime of draft evasion particularly suitable for a test of the deterrence hypothesis. Section III of the Article draws on these features to build a model of draft evasion to test the deterrence hypothesis. Section IV then presents the data used in the statistical test, and Section V contains the results of the empirical analysis. Finally, Section VI contains the major conclusions of the Article. Most significant of these conclusions is that there is a significant negative association between the probability of conviction for those who commit the crime of draft evasion and the draft evasion rate over a wide range of model specifications, a conclusion consistent with prior research that has indicated that certainty of punishment rather than severity of punishment is the key to deterring criminal behavior.

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[4] Empirical studies have been published in general legal periodicals, e.g., Antunes & Hunt, *The Deterrent Impact of Criminal Sanctions*, 51 J. Urb. L. 145 (1973); Passell, *The Deterrent Effect of the Death Penalty: A Statistical Test*, 28 Stan. L. Rev. 61 (1975), and cited or used by legal scholars, e.g., S. Kadish & M. Paulsen, Criminal Law and Its Processes 26-35 (3d ed. 1975); F. Zimring & G. Hawkins, *supra* note 1, at 249-338 (1973); Gale, *S.1 and the Death Penalty*, 9 Loy. L.A. L. Rev. 251, 280 n.168 (1976). They also have been published and cited in the specialized criminal law and criminology journals. *See, e.g.*, Bailey & Lott, *Crime, Punishment and Personality*, 67 J. Crim. L. & Criminology 99 (1976); Chauncey, *Deterrence*, 12 Criminology 447 (1975). The *Yale Law Journal* recently published a series of articles exchanging views on Isaac Ehrlich's empirical work concerning the deterrent effect of the death penalty. *Statistical Evidence on the Deterrent Effect of Capital Punishment*, 85 Yale L.J. 164-227, 359-80 (1975-1976) [hereinafter cited as *Yale Law Journal Symposium*].

[5] The judiciary and the federal and state legislatures have each made use of empirical studies of deterrence.

Empirical works on capital punishment were cited in four of the opinions in *Furman v. Georgia*, 408 U.S. 238 (1972). Justice Stewart, in a concurring opinion, cited The Death Penalty in America 258-332 (rev. ed. H. Bedau 1967) [hereinafter cited as Bedau] and Comment, *The Death Penalty Cases*, 56 Calif. L. Rev. 1268, 1275-92 (1968). 408 U.S. at 307-08 n.7. Justice Marshall, in a concurring opinion, cited T. Sellin, *supra* note 3. 408 U.S. at 348 n.98. In a dissenting opinion, Chief Justice Burger cited Allen, *Capital Punishment*, in Bedau, *supra* at 135; Hoover, *Statements in Favor of the Death Penalty*, in *id.* at 130; Sellin, *Homicides in Retentionist and Abolitionist States*, in Capital Punishment 135 (T. Sellin ed. 1967); Hart, *Murder and the Principles of Punishment*, 52 Nw. U.L. Rev. 433, 457 (1957). 408 U.S. at 395 nn.21 & 22. In another dissenting opinion, Justice Powell cited Bedau, *supra* at 265-66; 2 National Commission on Reform of Federal Criminal Laws, Working Papers 1354 (1970); T. Sellin, *supra* note 3, at 19-52; Hart, *supra* at 455-60. 408 U.S. at 454 nn.49 & 50. Justice Marshall discussed the evidence at length in the text of his concurring opinion in *Furman*. 408 U.S. at 347-54.

The Court also cited empirical material when it reconsidered *Furman* in 1976. *Gregg v. Georgia*, 96 S. Ct. 2909, 2930 n.31 (1976) (opinion of Stewart, J., citing T. Sellin, *supra* note 3; Hook, *The Death Sentence*, in Bedau, *supra* at 146; Baldus & Cole, *A Comparison of the Work of Thorsten Sellin and Isaac Ehrlich on the Deterrent Effect of Capital Punishment*, 85 Yale L.J. 170 (1975); Bowers & Pierce, *The Illusion of Deterrence in Isaac Ehrlich's Research on Capital Punishment*, 85 Yale L.J. 187 (1975); Ehrlich, *The Deterrent Effect of Capital Punishment*, 65 Am. Econ. Rev. 397 (1975); Peck, *The Deterrent Effect of Capital Punishment: Ehrlich and His Critics*, 85 Yale L.J. 359 (1976)). Justice Marshall again referred to the scientific evidence. 96 S. Ct. at 2974-75 (Marshall, J., dissenting, citing Baldus & Cole, *supra*; Bowers & Pierce, *supra*; *Yale Law Journal Symposium*, *supra* note 4; Ehrlich, *Deterrent Effect*, *supra*; Passell, *supra* note 4; Peck, *supra*).

The work of Thorsten Sellin and others was summarized for the United States Congress, and the summary incorporated in Senate hearings. *Reform of the Federal Criminal Laws: Hearing Before the Subcomm. on Criminal Laws and Procedures of the Senate Comm. on the Judiciary*, 92d Cong., 2d Sess., pt. 3, subpt. A, at 1062-73 (1972).

The drafting committee for the Model Penal Code incorporated into its Tentative Drafts a report on statistical evidence about the deterrent effect of the death penalty. T. Sellin, *supra* note 3.

In 1968, the California Assembly Committee on Criminal Procedure published and presented to the Assembly a pamphlet citing and using empirical studies of the deterrence hypothesis. Cal. Assembly Comm. on Criminal Procedure, Deterrent Effects of Criminal Sanctions (1968).

See also Bedau, *The Nixon Administration and the Deterrent Effect of the Death Penalty*, 34 U. Pitt. L. Rev. 557 (1973); Gale, *supra* note 4, at 251, 280.

I. THE LIMITATIONS OF THE PRIOR ANALYSES

In the last decade, various factors[6] have led to an outpouring of empirical research on the effects of criminal sanctions on crime rates.[7] Many of the empirical tests showed a negative association between crime rates and two variables: probability of apprehension and probability of imprisonment.[8]

The empirically observed negative associations might be construed as a demonstration of the deterrent efficacy of criminal sanctions;[9] however, there are cogent reasons for regarding the results as inconclusive. There are three principal criticisms of the tests: (1) the studies are based on inaccurate and incomplete data, (2) in some studies, the results reflect incapacitation of offenders rather than deterrence of offenders, and (3) the observed negative associations may be a reflection of the effects of the crime rate on the sanctions imposed, rather than vice versa. While the prior analyses do not all suffer equally from these problems, each has defects that render its results of questionable validity.[10]

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[6] Among these factors are increased availability of crime statistics for the development of data bases, development of sophisticated statistical techniques, the desire of policy makers for empirical results, and the increasing emphasis on analyzing social problems in recent years.

[7] Empirical studies of the deterrence hypothesis include AVIO & CLARK, PROPERTY CRIME IN CANADA: AN ECONOMETRIC APPROACH (1974) (Ontario Economic Council); Antunes & Hunt, *supra* note 4; Bowers and Pierce, *supra* note 5; Chiricos & Waldo, *Punishment and Crime: An Examination of Some Empirical Evidence*, 18 SOC. PROB. 200 (1970); Ehrlich, *Deterrent Effect*, *supra* note 5; Ehrlich, *Participation in Illegitimate Activities: A Theoretical and Empirical Investigation*, 81 J. POL. ECON. 521 (1973); Orsagh, *Crime, Sanctions, and Scientific Explanation*, 64 J. CRIM. L.C. & P.S. 354 (1973); Passell, *supra* note 4; Sjoquist, *Property Crime and Economic Behavior: Some Empirical Results*, 63 AM. ECON. REV. 439 (1973). Summaries of the studies and a detailed critique are contained in Nagin, *General Deterrence: A Review of the Empirical Evidence*, — MANAGEMENT SCI. — (forthcoming 1977), and Tullock, *Does Punishment Deter Crime?*, 36 PUB. INTEREST 103 (1974).

[8] *See, e.g.*, Avio & Clark, *supra* note 7 (negative associations between property crime rates and probability of arrest, and between property crime rates and probability of conviction); Ehrlich, *Participation*, *supra* note 7 (negative and significant association between crime rates and probability of conviction); Orsagh, *supra* note 7 (negative association between crime rates and probability of imprisonment); Sjoquist, *supra* note 7, at 446 (negative and statistically significant association between arrest probabilities and property crime rates).

Other than risk of arrest and risk of imprisonment, the variable most frequently used in the analyses is severity of punishment as measured by length of sentence. The results are much more equivocal in this instance. *See, e.g.*, Chiricos & Waldo, *supra* note 7 (negative but statistically insignificant association between severity of sentence and crime rate); Ehrlich, *Participation*, *supra* note 7 (negative but statistically insignificant association between expected sentence and crime rates).

Capital punishment and its effect on crime rates have been the subject of much recent research and controversy. *See, e.g.*, Ehrlich, *Deterrent Effect*, *supra* note 5; Passell, *supra* note 4. *See also* Peck, *supra* note 5.

[9] After a review of the literature, at least one investigator so construed the evidence. Tullock, *supra* note 7, at 110.

A. *Data Problems*

Poor data on the incidence of crime, which is a widely acknowledged problem[11] leads to potentially serious distortions in analyses of the deterrence hypothesis. Two phenomena are the major causes of inaccuracy in the data. First, all empirical studies of deterrence necessarily use reported rather than actual crime rates, yet recent surveys have shown that for some crimes between one-half and two-thirds of all criminal violations are never reported to the police.[12] Second, crime level data are sensitive to police administrative procedures for recording crimes. Police departments differ widely in the amount of discretion permitted in recording reported offenses.[13] Furthermore, since low crime rates are popularly regarded as indications of effective police enforcement, there is an obvious incentive for police departments to manipulate these statistics.[14] These variations in crime reporting rates across jurisdictions can force a negative association between reported crime rates and any sanction variable that includes the number of reported crimes in its denominator.[15]

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[10] Nagin, *supra* note 7. *See also* Cook, *Punishment and Crime: A Critique of Current Findings Concerning the Preventive Effects of Punishment*, — L. & CONTEMP. PROB. — (forthcoming); Friedman, The Use of Multiple Regression Analysis to Test for a Deterrent Effect of Capital Punishment (1975)(unpublished Working Paper #58, Graduate School of Public Policy, University of California at Berkeley).

[11] *See, e.g.*, Wolfgang, *Uniform Crime Reports: a Critical Appraisal*, 111 U. PA. L. REV 709 (1963). *See generally* PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE — TASK FORCE REPORT: CRIME AND ITS IMPACT — AN ASSESSMENT 21-25 (1967).

[12] Ennis, *Criminal Victimization in the United States*, 2 PRESIDENT'S COMMISSION OF LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, FIELD SURVEYS 41-42 (1967); NATIONAL CRIMINAL JUSTICE INFORMATION AND STATISTICS SERVICE, CRIMINAL VICTIMIZATION IN THE UNITED STATES 41-42 (1976). *See generally* R. HOOD & R. SPARKS, KEY ISSUES IN CRIMINOLOGY 11-45 (1970); Skogan, *Citizen Reporting of Crime*, 13 CRIMINOLOGY 535 (1976). *See also* NATIONAL CRIMINAL JUSTICE INFORMATION AND STATISTICS SERVICE, CRIME IN THE NATION'S FIVE LARGEST CITIES ADVANCE REPORT 28-29 (1974).

[13] In a field study of police departments in two large U.S. cities one investigator found a considerable difference in the latitude allowed the police in judging an offense as "unfounded". (An "unfounded" offense is one that is reported but not recorded because the police believe it lacks substance.) In one city where considerable discretion in recording crimes was permitted to the police, 20% of all reported offenses were not recorded in official crime statistics. The other city permitted little discretion in judging an offense as unfounded, and a higher percentage of reported offenses were recorded. The city permitting a high degree of discretion in judging unfounded offenses tended to have lower recorded crime rates and higher clearance rates. The higher clearance rate in the city permitting considerable discretion resulted from unfounded offenses not being included in the denominator of the clearance rate for statistics from that city. Hence, it appears that the amount of police discretion in recording crimes permitted the police has a substantial effect on clearance rates. (For a definition of clearance rate, see note 19 *infra*.) J. SKOLNICK, JUSTICE WITHOUT TRIAL 164-68 (1966).

[14] The degree to which recorded crime rates and clearance rates (for a definition of the clearance rate, see note 19 *infra*), particularly for less serious crimes, are subject to intended or unintended manipulations is graphically demonstrated by statistics on the number of crimes reported and the number of crimes cleared in New York City before and after a 1965 change in police administration. Under the new administration, records for less serious offenses, particularly the property-related crimes of burglary and robbery, showed increases that cannot be attributed to increases in their incidence. In contrast, recorded incidence of murder and non-negligent manslaughter remained relatively stable despite the change in administrations. The difference can be explained by the fact that since murder and manslaughter are perhaps the most serious of all crimes, it is unlikely that one of these crimes would be recorded as any lesser crime or be otherwise subjected to statistical manipulation. Over the change in administrations, the absolute number of clearances remained stable for each crime type, and for the three property crimes of larceny, burglary, and auto theft, the total number of clearances actually decreased slightly. F. ZIMRING & G. HAWKINS, *supra* note 1, at 333-34.

Other types of sanction measures, such as convictions per arrest or time served, can also be biased by a correlation with reporting rate. Thus, if variations in crime reporting rates across jurisdictions[16] are correlated with variations in the sanction variables, the use of reported rather than actual rates will bias the estimated association since it will reflect this correlation in addition to any deterrent effect. Such a correlation can be postulated on the grounds that reported crime levels and criminal sanction levels may each be a function of the demographic or other characteristics of a region.[17]

Inaccuracies in the data on sanction measures have not been as thoroughly examined as those on crime levels, but the data used in prior studies are subject to question.[18] For example, clearance rate is one sanction measure that has been used extensively in earlier analyses.[19] Since the denominator of the clearance rate is the number of crimes recorded by the police departments, and since clearance rates are regarded as a measure of police efficiency, data on clearance rates are subject to some of the same criticisms as data on crime levels.

Plea bargaining may also affect the data on sanction levels in that it results in individuals being sentenced for lesser crimes than those reported at the times of arrest.[20] Thus, the statistics on the probabilities of imprisonment, particularly for more serious offenses, are likely to understate the actual probabilities. This tends to force a negative association between imprisonment risks and crime rates[21] if higher crime rates are associated with more plea bargaining.

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[15] *See* Nagin, *supra* note 7.

[16] Non-reporting of some crimes is greater than 50%. *See* note 12 *supra* and accompanying text. Furthermore, there is substantial variation in reporting rates across jurisdictions. *See* NATIONAL CRIMINAL JUSTICE INFORMATION AND STATISTICS SERVICE, CRIME IN EIGHT AMERICAN CITIES 5 (1974).

[17] *See* Nagin, *supra* note 7.

[18] Nagin, *supra* note 7. The only extensive investigation of the limitations of the data on sanctions is contained in F. ZIMRING & G. HAWKINS, *supra* note 1, at 249-338.

[19] Clearance is the disposition of a crime by the department. Arrest is the primary method of clearance. Police performance is often measured by clearance data, so the police have an interest in high clearance ratios, that is, number of dispositions divided by number of recorded crimes. Clearance data can also be used as a measure of the probability of apprehension after committing a crime. Examples of studies using clearance rates as a sanction measure are Avio & Clark, *supra* note 7; Carr-Hill & Stern, *An Econometric Model of the Supply and Control of Recorded Offenses in England and Wales*, 2 J. PUB. ECON. 289 (1973); and Sjoquist, *supra* note 7. *See generally* Nagin, *supra* note 7. To the extent police have employed different criteria for recording or classifying crimes as unfounded, the data in these studies will be inaccurate. *See* Skolnick, *supra* note 13, at 167-81.

[20] "Most defendants who are convicted — as many as 90 percent in some jurisdictions — are not tried. They plead guilty, often as a result of negotiations about the charge or the sentence." PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, THE CHALLENGE OF CRIME IN A FREE SOCIETY 135 (1968). *See also* ABA PROJECT ON MINIMUM STANDARDS FOR CRIMINAL JUSTICE, STANDARDS RELATING TO PLEAS OF GUILTY (Approved Draft 1968); L. DOWNIE, JUSTICE DENIED: THE CASE FOR REFORM OF THE COURTS (1971); Comment, *Plea Bargaining Mishaps—The Possibility of Collaterally Attacking the Resultant Plea of Guilty*, 65 J. CRIM. L.C. & P.S. 170 (1974).

[21] A similar problem is the possibility that some crimes are substitutable for other crimes. For

B. *The Effect of Incapacitation on Crime Rates*

While in jail or prison, a person is constrained from committing further crimes against the general community. Hence, in jurisdictions with relatively long prison sentences or high probabilities of imprisonment, crime rates may be lower, so that observed negative associations between each of these two sanction variables and crime rates will reflect in part the effects of incapacitation. None of the reported analyses have accounted satisfactorily for the effects of incapacitation on crime rates, so that their results are subject to criticism on this basis.[22]

C. *The Problem of Simultaneity*

Many of the early empirical analyses of the deterrence hypothesis implicitly assumed that criminal sanctions may affect crime rates, but ignored the possibility that crime rates may also affect criminal sanctions —that is, that crime rates and criminal sanctions may be simultaneously determined.[23] Simultaneity may cause classical regression analysis to yield inconsistent results,[24] so its possible existence is of great concern. Recent investigators have recognized that simultaneous relationships may exist between crime levels and criminal sanctions, and have begun to question the results of the early studies.[25]

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example, an increase in the sanctions for robbery may cause an increase in the number of burglaries, as criminals seek to avoid the higher sanctions imposed for robbery. A. Smigel, Crime and Punishment: An Economic Analysis (1965) (unpublished M.A. thesis, Columbia University), *cited in* Becker, *Crime and Punishment: An Economic Approach*, 76 J. POL. ECON. 169, 177 n.25 (1968). *See* R. HOOD & R. SPARKS, *supra* note 12, at 134-37. *But see* F. ZIMRING & G. HAWKINS, *supra* note 1, at 128-41.

[22] Physically confining a portion of the population *must* result in lower crime rates if the imprisoned individuals would have committed *some* crimes if not imprisoned and their incarceration does not have the effect of increasing the number of crimes committed by those persons who are not incarcerated; therefore, an increase either in the probability of imprisonment or average sentences will reduce the crime rate somewhat, assuming imprisonment does not increase a person's crime rate *after* he is released. There have been few attempts to measure the magnitude of the effects of incapacitation on crime rates. It has been postulated that such effect can be a substantial component of the negative association. *See* Nagin, *supra* note 7. *See also* Shinnar & Shinnar, *The Effects of the Criminal Justice System on the Control of Crime*, 9 L. & SOC'Y REV. 581 (1975).

[23] In both social and physical systems, variables frequently interact. In economics, for example, the price that suppliers ask for their goods affects the quantity consumers purchase. The quantities consumers purchase in turn affect the price that suppliers ask for their goods. Thus, changes in price could be caused by changes in demand or changes in demand could be caused by changes in price.

Simultaneity between two variables is a relationship where mutual causal interaction is assumed to occur contemporaneously during the period of observation. For a given observation period, a necessary requirement for a phenomenon to be simultaneous is that the impact of the actions taken by the system's actors be transmitted fast enough so that each actor can react to the actions of the other actors within the observation period. Thus, a critical parameter is the length of the observation period. If the period is sufficiently short, then any causal interaction can be modeled as non-simultaneous. On the other hand, if the period is sufficiently long, all such associations can be made simultaneous. In the context of the causal interaction of crimes and sanctions, where observations are generally made annually, the association is simultaneous if within a 1 year period potential criminals receive cues on the current level of sanctions being delivered by the criminal justice system, and the level of crime in the current period also works to influence the sanctions delivered by the criminal justice system.

[24] A. GOLDBERGER, ECONOMETRIC THEORY 292 (1964); J. JOHNSTON, ECONOMETRIC METHODS 341-47 (2d ed. 1972). When two variables *x* and *y* are simultaneously related, a regression of *y* on *x* and *x* on *y* cannot tell us the magnitude of the respective effects of *x* on *y* and *y* on *x* since their mutual effects on each other will hide their respective effects in each of the regression coefficients. Therefore, the respective coefficients cannot be regarded as estimates of the causal effect of each of the variables on the other.

[25] The concept of a simultaneous relationship between crime rates and sanction levels was proposed by

Crime rates and criminal sanctions may be simultaneously determined because increased crime rates may reduce clearance rates[26] by over-taxing police resources[27] or because increased crime rates cause judges to impose different sanctions.[28] In any event, if the crime rates affect sanction levels through any mechanism, analyses of the deterrence hypothesis require consideration of the problems of simultaneity.

A number of studies have attempted to account specifically for the problems of simultaneity,[29] but there are good reasons for regarding their results as inconclusive.[30] Put in its simplest form, estimation of the deterrence effect in a simultaneous system of crime rates and sanctions involves identifying certain factors that affect only sanctions and not crime rates.[31] The criticisms of the identification restrictions used in previous studies of the deterrence hypotheses to deal with the simultaneous relationships have been extensively discussed elsewhere.[32] The conclusion that the problems associated with the presence of simultaneity prevent any of the prior analyses from being considered conclusive tests of the deterrence hypothesis is inescapable.[33]

II. Draft Evasion as a Basis for Testing the Deterrence Hypothesis

Draft evasion was chosen for this test of the deterrence hypothesis because institutional features made it likely that draft evaders were fully aware of the potential penalties for their crime and therefore had the information necessary to respond to measures designed to deter crime.

Becker, *Crime and Punishment: An Economic Approach*, 76 J. Pol. Econ. 169 (1968), and by Ehrlich, *Participation*, *supra* note 7, from an economics perspective.

[26] The clearance rate is the ratio of crimes solved most frequently by arrest of a suspect. *See* note 19 *supra*.

[27] *See* Carr-Hill & Stern, *supra* note 19; Ehrlich, *Participation*, *supra* note 7. Clearance rate, a measure of the risk of apprehension, has been used as a sanction variable in many of the prior studies. *See* note 19 *supra*, and sources cited therein.

[28] Increased crime rates could cause judges to impose less severe sanctions under the theory that society is willing or able to deliver a fairly constant, limited amount of total punishment, so that as the crime rate increases, the severity of criminal sanction for each crime is reduced. *See* Blumstein & Cohen, *A Theory of the Stability of Punishment*, 64 J. Crim. L.C. & P.S. 198 (1973); Blumstein, Cohen & Nagin, *The Dynamics of a Homeostatic Punishment Process*, 67 J. Crim. L.C. & P.S. — (forthcoming 1976).

[29] *See, e.g.*, Carr-Hill & Stern, *supra* note 18; Ehrlich, *Deterrent Effects*, *supra* note 7; Orsagh, *supra* note 7, at 357; Votey & Phillips, *An Economic Analysis of the Deterrent Effect of Law Enforcement on Criminal Activity*, 63 J. Crim. L.C. & P.S. 330, 336 (1972).

[30] These reasons are discussed in Nagin, *supra* note 7.

[31] These factors serve as identification restrictions in the simultaneous model. *See, e.g.*, A. Goldberger, *supra* note 24; J. Johnston, *supra* note 24.

Another variable frequently posited to be simultaneously related to crimes and sanctions is the level of resources devoted to the criminal justice system, in particular the police. A variable affecting these resources but not crime rates can also serve as an identification restriction in the simultaneous model. *See, e.g.*, Ehrlich, *Participation*, *supra* note 7, at 540-43.

[32] *See* Nagin, *supra* note 7.

[33] The identification of simultaneous relationships always involves a large amount of subjective judgment and therefore the results of estimation of such systems are always open to criticism. See, *e.g.*, the criticism of Ehrlich's identification of simultaneous relationships in estimating the correlation between homicide rates and the death penalty in Passell, *supra* note 4, at 63.

Also, the choice of draft evasion for analysis avoids many of the problems of prior analyses caused by poor data, incapacitation effects, and simultaneity.

When an individual refused an induction order, he was formally notified by the Selective Service Office of his failure to comply with the order. In most cases, before prosecutorial action was taken a second induction order was sent. If the individual still failed to comply with the order, a complaint was filed by the Selective Service Office with the United States Department of Justice.[34]

Upon receiving a complaint, the Justice Department normally assigned an FBI agent to interview the recalcitrant individual to try to induce voluntary compliance with the order.[35] If the individual complied, the complaint was dropped; if not, an indictment was sought. In most cases, the indictment was granted[36] and a case was filed by the Justice Department with a United States District Court. The case then proceeded to trial. If the defendant submitted himself for induction at any time prior to trial, charges against him were dismissed.[37]

Draft evasion, then, was marked by institutional features that indicate that draft evaders had more complete information about the consequences of their acts than those who commit the "index crimes"[38] used in most analyses of the deterrence hypothesis.[39] A draft evader had an extended opportunity to consider his decision because of Selective Service Office and Justice Department policies of pressuring the individual to submit for induction rather than face prosecution, and a draft evader almost certainly became fully aware of the criminal sanctions he faced through contact with various governmental officials and his own lawyer. To the extent that an assumption of informed, rational behavior underlies theories of the deterrence hypothesis,[40] draft evasion is an ideal crime for analysis.

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[34] The information in this paragraph was obtained by the authors in a series of interviews with various prosecutors and defense attorneys in draft evasion cases. A similar description of the draft evasion process was independently obtained by another investigator. Note, *Prosecutions for Selective Service Offenses: A Field Study*, 22 STAN. L. REV. 356, 371-72 (1970).

[35] The FBI interview was also intended to determine whether the failure to comply was willful. *Id.* at 371.

[36] W. Markham, Draft Offenders in the Federal Courts: A Search for Social Correlates of Justice (1973)(unpublished Ph.D. dissertation, University of Pennsylvania). *See generally* Note, *supra* note 34, at 372 nn.92-93 and accompanying text.

[37] It was the general policy of the Justice Department during this period to authorize dismissals of indictments charging failure to comply with orders for induction if the defendant submitted to processing for induction and was either accepted or rejected by the Armed Forces. *The Selective Service System: Its Operation, Practices, and Procedures, Hearings Before the Subcomm. on Admin. Prac. and Proc. of the Senate Comm. on the Judiciary*, 91st Cong., 1st Sess. 371 (1969). *See generally* Note, *supra* note 34, at 371.

[38] Conventional street crimes are more likely to be impulsive acts performed by individuals who have vague information about potential sanctions for their acts. *See generally* Claster, *Comparison of Risk Perception Between Delinquents and Non-Delinquents*, 58 J. CRIM. L.C. & P.S. 80, 81 (1967).

[39] Most analyses use Federal Bureau of Investigation "index crimes", murder, non-negligent manslaughter, rape, robbery, burglary, larceny and auto theft. Extensive data are compiled on these crimes in periodic publications such as the FBI UNIFORM CRIME REPORTS, CRIME IN THE U.S. (*published annually*).

The crime of draft evasion is also free of many of the data problems which have plagued investigations of the deterrence hypothesis using other crimes. Draft evasion occurred only when there was a refusal to comply with an induction order,[41] and virtually every refusal to comply was followed by an indictment.[42] Therefore, data on draft evasion rates are relatively free from problems caused by errors in the reporting and recording of crimes. Since a draft evasion charge was unlikely to be reduced to a lesser offense, data on draft evasion are also immune from the deviations caused by charge reduction because of plea bargaining.[43]

In addition, the confounding of incapacitation and deterrent effects common to previous tests of the deterrence hypothesis is absent in a test based on the crime of draft evasion. An individual could evade the draft only once,[44] hence imprisonment of an individual for draft evasion has no relationship to his future commission of the crime of draft evasion.

Finally, an analysis of the deterrent effects of criminal sanctions on draft evasion is less likely to involve simultaneity of variables than studies using other crimes. One reason for postulating simultaneous effects in previous analyses of deterrence was the hypothesis that the resources of the criminal justice system become overtaxed when the crime rate increases.[45] This probably did not happen in the instance of draft evasion. Draft evasion cases were prosecuted in federal courts, which are on average better staffed and financed than the state courts,[46] where most of the crimes used in the previous analyses are prosecuted.[47] Furthermore, draft evasion cases, which were only a small percentage of the total case load in the federal courts,[48] were given priority for prosecution in federal courts during the time periods used in the analysis.[49] There is still the possibility that a simultaneous relationship between the level of draft evasion and sanction levels exists for reasons other than resource saturation;[50] however, the data used in the present analysis reduce the possibility that these problems affect the results.[51]

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[40] Deterrence implies criminal activity lessens in response to the threat of imposition of criminal sanctions. "[Deterrence] assumes a perfectly hedonistic, perfectly rational actor whose object is to maximize pleasure and minimize pain. To such an actor contemplating the possibility of a criminal act, the decision is based on a calculus: How much do I stand to gain by doing it? How much do I stand to lose if I am caught doing it? What are the chances of my getting away with it? What is the balance of gain and loss as discounted by the chance of apprehension? The purpose of criminal punishment, in this model, is to inject into the calculus a sufficient prospect of loss or pain to reduce to zero the attractiveness of the possible gain." H. PACKER, *supra* note 1, at 40-41; *cf.* W. BROMBERG, *supra* note 2, at 1-10; G. ZILBOORG, *supra* note 2. The notion of rationality has been formalized by many authors. *See, e.g.*, Luce & Suppes, *Preference, Utility, and Subjective Probability*, in 3 HANDBOOK OF MATHEMATICAL PSYCHOLOGY 249 (1965). For the perspectives of a sociologist on deterrence and rationality, see Andenaes, *supra* note 2 at 947-73. For economic perspectives, see McKENZIE AND TULLOCK, THE NEW WORLD OF ECONOMICS (1975) and Ehrlich, *Participation*, *supra* note 7, at 538-40.

Rational economic behavior requires information and each increment of information is valued. *See, e.g.*, Stigler, *The Optimum Enforcement of Laws*, 78 J. POL. ECON. 526 (1970). More information increases the probability that any given economic decision will result in a preferred state of affairs. *Id.* To the extent that an individual has information about sanctions, which are "costs" in the deterrence hypothesis, H. PACKER, *supra* note 1, at 40-41, crime levels will reflect the value that potential criminals place upon these costs. Conversely, an absence of information will mean that the cost of sanctions is not reflected in crime level.

[41] Almost all prosecutions under the Selective Service Act involve cases of draft evasion. A small percentage of cases involve destruction of draft cards or minor offenses such as failure to keep the local Selective Service Board informed of changes affecting draft status. *See* L. HERSHEY, LEGAL ASPECTS OF SELECTIVE SERVICE 46-47 (1963); Note, *supra* note 34, at 372 n.93. These cases cannot be separated in the data, but because they represent only a small proportion of the total cases, the error introduced is small. *See* note 78 *infra*.

[42] *See* note 36 *supra*.

[43] "It is impossible to plead guilty to a lesser offense . . . ." Note, *supra* note 34, at 373 n.97.

[44] In theory, a person could be convicted a second time for draft evasion after being released for a first offense. In practice, however, this was not done. A previously convicted registrant normally was found morally unfit for service and placed in Class I-Y, 32 C.F.R. § 1622.17 (1969), or Class IV-F, *id.* § 1622.44.

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[45] *See* note 26 *supra* and accompanying text.

[46] In 1968-69, the federal government was responsible for 10.6% of the total expenditure in the United States for judicial activities of the criminal justice system. LAW ENFORCEMENT ASSISTANCE ADMINISTRATION & BUREAU OF THE CENSUS, EXPENDITURE AND EMPLOYMENT DATA FOR THE CRIMINAL JUSTICE SYSTEM: 1968-69, at 1 (1970). Thus the federal government's share of the expenditures was probably somewhat larger than its share of the caseload. E. FRIESEN, E. GALLAS & N. GALLAS, MANAGING THE COURTS 87-90 (1971); PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, TASK FORCE REPORT: THE COURTS 31-33 (1967). *See generally Deficiencies in Judicial Administration: Hearings on S. 1033 Before the Subcomm. on Improvements in Judicial Machinery of the Senate Comm. on the Judiciary*, 90th Cong., 1st Sess. (1967).

[47] The FBI index crimes are for the most part not federal crimes. There were approximately 19,510 murders and 382,680 robberies throughout the nation in 1973. FBI UNIFORM CRIME REPORTS, CRIME IN THE U.S. 1973, at 1 (1974), yet only 78 murders and 785 robbery cases were pending in U.S. District Courts as of June 30 in the same year. ADMINISTRATIVE OFFICE OF U.S. COURTS, FEDERAL OFFENDERS IN UNITED STATES DISTRICT COURTS FISCAL YEAR 1973, Table D-8 (1976).

[48] In the 2 years used for analysis in this study (1970 and 1971), draft evasion cases were fewer than 3,000 out of a total of 45,000, or less than 7% of cases filed in federal district courts. *Administrative Office of the U.S. Courts*, *supra* note 47, at 11, 16.

[49] "Precedence shall be given by courts to the trial of cases arising under this [Selective Service] title and cases shall be advanced on the docket for immediate hearing . . . ." 50 U.S.C. APP. § 462(a) (1970), *cited in The Selective Service System*, *supra* note 37, at 365.

[50] For example, it is possible that sentencing behavior changes in response to increased crime rates because judges give harsher sentences so as to "crack down" on crime, or become more lenient in order to keep the total amount of punishment constant. *See* note 28 *supra* and accompanying text.

[51] If either of the hypotheses about crime-to-sanction levels set out in this Article, *see* note 28 *supra* and accompanying text, is correct, there will be a time lag between a change in draft evasion rates and its effect on sanction levels. In this event, any relationship between crime levels and sanctions will be recursive rather than simultaneous.

In this Article, draft evasion rates are estimated with calendar-year data, and sanctions are based on fiscal year data; the evasion rates lead the sanction levels by an average of 6 months. These data are described further at nn. 78-88 *infra* and accompanying text. The analysis covers only two time periods. A time lag is associated with the inertia of any social system responding to an external change in the environment. The issue of simultaneity in this instance depends on how quickly these responses occur. *See* note 23 *supra*. In the present case, if a response occurs in the interval during which the variables are measured, the relationship would be simultaneous. *Id.* For example, if draft evasion rates and sanction levels were measured over a 10 year period, the relationship might well be simultaneous. Measuring the draft evasion rate on a calendar-year basis and sanction level on a fiscal-year basis decreases the probability of simultaneity affecting the results. To the extent that changes in the evasion rate do not influence sanctions imposed within 6 months of those changes, the non-simultaneous estimation procedures used in this analysis will not lead to bias if there is no serial correlation in the data.

An assumption of no serial correlation is crucial for making consistent parameter estimates with regression analysis if crime rates do have an effect on sanction levels. The results of the analysis contain some support for this assumption, *see* note 119 *infra* and accompanying text, but note that the assumptions are necessary only if the hypothesis that crime rates affect sanction levels has validity. Examples of simultaneous estimation procedures used in a deterrence context are Ehrlich, *Participation*, *supra* note 7, and Sjoquist, *supra* note 7.

III. A MODEL OF DRAFT EVASION

Models of deterrence are generally[52] of the form

$$q = f(P, \hat{V}),$$

where q is a measure of the crime rate, P is a measure of punishment, $\hat{V}$ is a vector of other variables which includes, for example, socio-economic variables, and f represents the functional form of the model.

Specifying a model of the determinants of q involves choosing a particular functional form (f), deciding which variables are the relevant measures of punishment (P) and specifying other variables to be included in ($\hat{V}$).[53] The other variables are included to account for variations in the crime rate that are due to factors other than the punishment variables.[54]

Consider the model

$$q = f(p,s,u,b,e,y,l,o,r,t),$$

where, for any jurisdiction:

q = the percentage of inductees who refuse to comply with an induction order,
p = the probability of conviction in a draft evasion trial,
s = the expected prison sentence in draft evasion cases that are not resolved prior to trial,
u = the percent of population living in urban areas,
b = the percent of population that is black,
e = the median education of the population over age 25,
y = the median real family income,
l = the percent of the population classified as poor,
o = the percent of the population opposed to United States involvement in Viet Nam,
r = a regional categorical variable,
t = a time categorical variable.

In this analysis, the method of ordinary least squares regression[55] is used to estimate parameters of the model, and in particular to determine the deterrent effect of the criminal sanctions, p and s, on draft evasion rates.

The justification for including most of the socio-economic variables in deterrence models has been extensively developed elsewhere.[56] A measure of political opinion about the Viet Nam war is included in this model because it is hypothesized that the political and social impact of the war may influence a draftee's willingness to submit to induction. A regional categorical variable is included to reflect regional, cultural or political differences, and a time categorical variable is included to reflect a variety of time-related factors not specifically included in the model that may affect draft evasion rates.[57]

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[52] *See, e.g.*, Becker, *supra* note 25, at 177; Ehrlich, *supra* note 7, at 537; Passell, *supra* note 4, at 64-65.

[53] The method and rationale for developing such models are explained in any basic econometrics text. *See, e.g.*, A. GOLDBERGER, *supra* note 24, at 156-227; J. JOHNSTON, *supra* note 24, at 121-68.

[54] *Id.*

[55] *See* notes 95-98 *infra* and accompanying text.

IV. Data and Variable Estimation

Although the data on draft evasion are better and more complete than the data on the crimes used in prior analyses, they still have limitations that must be accounted for if the model is to provide a valid estimation of the deterrent effect of criminal sanctions on draft evasion.

Prior to 1969, when a series of draft law reforms such as the lottery system came into effect, legal draft avoidance was possible by such means as scholastic deferments and draft-exempt employment.[58] The reforms reduced possibilities for legal avoidance,[59] increasing the number of persons forced to make the decision whether to evade the draft. To the extent the reforms were successful, data on draft evasion for the years after 1969 are free from problems caused by the possibility that those who faced draft evasion decisions were not representative of the general draft-age population.[60] Therefore, this analysis uses only post-1970 data. The incidence of draft evasion ended for all practical purposes in 1972 with the termination of induction calls.[61] Therefore, the study is limited to data for 2 years, 1970 and 1971.[62] Since individual states are the smallest geographical unit for which data on all variables are available, this study uses cross-sectional state data for the United States in the analysis.[63]

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[56] *See, e.g.*, A. Goldberger, *supra* note 24, at 218-27; J. Johnston, *supra* note 24, at 176-86.

[57] Including each non-sanction variable is an attempt to control for factors that may affect both sanction levels and evasion rate. If unaccounted for, such factors would lead the regression to estimate a spurious association that would not be reflective of a causal association between draft evasion rates and sanction levels. Inclusion of these variables cannot bias the estimates of the association between sanction levels and draft evasion rates, even if they have no effect on draft evasion rates. *See, e.g.*, A. Goldberger, *supra* note 24; J. Johnston, *supra* note 24.

[58] The student and occupational deferments were instituted by executive order. Exec. Order No. 10,292, 16 Fed. Reg. 9,843 (1951), *as amended by* Exec. Order No. 10,562, 19 Fed. Reg. 6,075 (1954) (student); Exec. Order No. 11,360, 32 Fed. Reg. 9,787 (1967) (occupational). The student deferment was limited or expanded by the executive department according to the need for military manpower. For a chronology and discussion of the reach and effect of the student deferment, see M. Useem, Conscription, Protest, and Social Conflict 91-99 (1973).

The impact of the occupational and student deferments is indicated in a Defense Department study comparing the draft classifications of all living registrants at five dates between 1955 and 1966. In 1966 the student and occupational deferments accounted for 7.7% and 0.8%, respectively, of the total number of living registrants. *Review of the Administration and Operation of the Selective Service System: Hearings Before the House Comm. on Armed Services*, 89th Cong., 2d Sess. 10,004 (1966). Compare Secretary of Defense Melvin R. Laird's statement in 1969 that 40% of all 19 year-olds took advantage of the student deferment. *Hearings on H.R. 14001 and H.R. 14015 Before the Special Subcomm. on the Draft of the House Comm. on Armed Services*, 91st Cong., 1st Sess. 4,303 (1969). The student deferment was phased out by a regulation restricting its use to full-time students who were pursuing bachelor degrees in the 1970-71 academic year. 32 C.F.R. § 1622.25 (1972).

The graduate student deferment was revoked at the same time. 36 Fed. Reg. 23,377 (1971). The occupational deferment generally followed this phase-out policy from 1972-73, at which time the deferment was entirely eliminated. 38 Fed. Reg. 15,626 (1973).

Draft evasion prosecutions rose with the institution of the lottery system and the deferment phase-outs. A trial began in 1,744 draft evasion cases in 1969, the year prior to the institution of the lottery. The number of defendants for this crime rose to 2,833 in 1970 and peaked at 4,906 in 1972, the year deferments for new students ended. The number of defendants declined to 2,093 in 1974. These data are contained in a chart depicting disposition and sentencing of all defendants charged with violation of the Selective Service Act from 1945-74 in Administrative Office of the United States Courts, *supra* note 47, at H-10.

[59] *See* Special Message to Congress on Reforming the Military Draft (May 13, 1969), Pub. Papers 365 (1971). Congressional debate over repealing the limitations on the President's authority to establish a

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random selection system, while concerned primarily with reducing the uncertainties faced by draft pool numbers, also noted the need for eliminating the inequities associated with deferments. *See Hearings on H.R. 14001*, *supra* note 58, at 4,637. Both occupational and student deferments were phased out beginning in 1969. *Compare* 32 C.F.R. § 1622.22 (1969) *and* 32 C.F.R. § 1622.24 (1969) *with* 32 C.F.R. § 1622.22 (1971) *and* 32 C.F.R. § 1622.25 (1972).

[60] Some evidence of the distorting effect of deferments on the representative nature of the draft pool is indicated by the educational level of those with occupational deferments. Defense Department data indicate that males with college degrees were vastly overrepresented among holders of the occupational deferment. *Review of the Administration and Operation of the Selective Service System: Hearings Before the House Comm. on Armed Services*, *supra* note 58, at 10,011. This study indicated that less than 2% of army inductees were college graduates. *Id.* 10,012.

Data on the educational level of those leaving the armed services show that the percentage of those with some college training nearly doubled between 1968 and 1971 when over one-fourth of those leaving the armed services had some college background. M. Useem, *supra* note 58, at 97. This would indicate that in the late 1960's, even prior to the lottery, many more college-educated men were initiated into the military than in previous years. Deferment levels of males enrolled in institutions of higher learning, however, stayed at nearly the same proportion among the entire male college-enrolled population from 1966 to 1970. *Review of the Administration and Operation of the Draft Law: Hearings Before the Special Subcomm. on the Draft of the House Comm. on Armed Services*, 91st Cong., 2d Sess. 12,601 (1970).

The general elimination of the student deferment and the elimination of the occupational deferment after the lottery was instituted should have added many more educated persons to the draft pool. *See* note 58 *supra*. The increased educational representativeness in the draft pool made it likely that this group more closely represented the general population of draft-age individuals.

[61] *See generally* note 58 *supra*.

[62] The available data on cases terminated cover the period 1970 to 1973. Terminations after 1973 were not available. Evasion rates for 1972 were not calculated because the number of 1972 cases filed included in the available termination data was substantially less than the number of all 1972 filings for draft evasion published by the Administrative Office of the Courts in 1973. This difference presumably results from the fact that many of the 1972 filings were still pending after 1973. The counts for 1970 and 1971 compared much more closely with the published figures. In fiscal years 1970 and 1971, respectively, 3,712 and 4,539 filings were made for Selective Service violations. Administrative Office of the United States Courts, Federal Offenders in United States District Courts: 1971, at 87 (1973). By fiscal 1973, 3,082 and 3,871, respectively, had been terminated. Therefore, about 20% of the filings are not included in the data used in our analysis samples.

To determine the extent that variations across states in the proportion of cases not terminated, and therefore not included in the evasion count, might bias the estimated sanction coefficients, the proportion of cases filed in 1971 but not terminated by 1973 in each state included in the analysis was correlated with the sanctions in that state. (Filing information by state was not available for 1970; the filing information by state for 1971 was obtained from Administrative Office of the United States Courts, Federal Offenders in the United States District Courts: 1971, *supra*.) The measure of probability of conviction used in the analysis was found to have a negligible correlation of .034 with the non-termination rate; the expected sentence was found to have a fairly substantial negative correlation of −.34 with the proportion of cases not terminated. This is troublesome because it suggests that higher sentences are associated with a higher estimate of the evasion rate, an association which could alter the estimate of the true deterrent effect. However, since the most significant results of the analysis pertain to the estimated association between probability of conviction and the evasion rate, *see* notes 107-121 *infra* and accompanying text, the correlation of the expected sentence with the non-termination rate is not of great concern.

[63] Since evasions are prosecuted in the federal district in which the offense occurred, the preferred sampling unit is the federal district. All federal districts, of which there are 89 in the 50 states, are geographic

A. *The Evasion Rate*

One way to estimate the evasion rate in a particular year is to divide the number of "evaders" by the draft call in a state in that year.[64] An alternative denominator of the evasion rate, the entire draft age population, is not proper since by hypothesis only those draft-age individuals who actually receive an induction notice actually must confront the decision to evade.[65] Consequently, the draft call in each state is used as the denominator in calculating the evasion rate.[66]

There is some ambiguity in the term "draft evader." Those persons who refuse induction orders and are indicted for draft evasion can be categorized in three separate groups.[67] The first group is composed of those who had incontrovertible evidence that the Selective Service System had improperly classified them as eligible for induction into the armed services.[68] Examples are persons for whom the Selective Service failed to follow required procedures for establishing a conscientious-objector classification,[69] and those who were obviously entitled to medical deferment. Persons in this group never had to consider the possible sanctions for draft evasion and so should not be counted as true evaders.[70] Persons in this group regularly

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subdivisions of a state. However, states rather than federal districts, are the smallest geographic unit for which draft call data were available. Therefore, evasion rates could not be estimated at the somewhat more disaggregate level of the federal district. Using states as the sampling unit may possibly result in aggregation biases in the estimated sanction coefficients. The potential sanctions confronting an evader are estimated by using the statewide averages for sanctions rather than the sanction in his federal district. Since a single federal district had jurisdiction over the entire state in 27% of the observations, and two federal districts had jurisdiction in an additional 32% of the observations, the aggregation problems are not judged to be serious.

[64] Since the filing of a case occurs subsequently to the initial evasion decision, there may be some inaccuracy introduced by using data on refusals to comply with an induction notice and draft calls from the same year. This inaccuracy does not appear to be substantial, however, because an indictment was sought quickly once it became apparent that a decision to refuse induction had been made. *See generally* notes 34-37 *supra* and accompanying text.

[65] *See generally* notes 45-59 *supra* and accompanying text.

[66] For a description of these data, see note 78 *infra*.

[67] The partition of the persons who refused induction into three groups stems from discussions concerning draft evaders the authors had with Selective Service officials, United States attorneys who prosecuted Selective Service violations, and attorneys who defended draft evaders.

The apparent element of subjectivity in this categorization is insignificant, since the model development, *see* notes 76-77 *infra* and accompanying text, is designed to deal with the ambiguity, and since the results are not affected by the categorization, *see* notes 109-110 *infra* and accompanying text.

[68] One source indicates that this number may be very small. *See* Note, *supra* note 34, at 372 n.91.

[69] The use of procedural irregularity to escape the criminal sanction for evasion of the Selective Service Act has been characterized as "the main thorn for years in the side of effective enforcement of the [A]ct." *Review of the Administration and Operation of the Draft Law: Hearings Before the Special Subcomm. on the Draft of the House Comm. on Armed Forces*, *supra* note 60, at 12,871 (statement of William S. Sessions). Procedural error by the local board was blamed as one of the two major reasons to account for dismissal of one-half of the nearly 3000 indictments for draft evasion in 1970. *Id.* at 12,876. "Indeed, . . . it would be rare, after going through a given selective service cover sheet 'with a fine tooth comb,' not to find some procedural defect which a court having no enthusiasm for draft act cases might conclude to be a substantive or prejudicial error vitiating the induction process or the order which the registrant was charged with disobeying." *Id.* at 12,873. *See also* Note, *supra* note 34, at 371-72.

[70] This approach does not imply an absence in some instances of deep ideological or other personal commitment against military service; rather it merely emphasizes the objective fact that since they knew their cases would be dismissed some persons never had to consider the potential sanctions for evasion.

received pre-trial dismissals at the request of the U.S. Attorney's office when the insubstantiality of the charges against them became known.[71] Not all those who received pre-trial dismissals should be included in this category, however, because some persons whose cases were dismissed prior to trial may not have known at the time of their refusal to be inducted that the cases against them were so insubstantial as to warrant dismissal. Thus, at the time of their initial refusal, they intended to stand trial rather than submit to induction.

The second group consists of those persons who recanted on their decisions to refuse to comply with the induction order and submitted for induction before a trial was held, and those whose cases were dismissed but who would have submitted for induction if their cases had not been dismissed. Persons in this group may have changed their decisions to evade because they became aware of the possible sanctions for draft evasion through the government's efforts to inform them,[72] because they thought they might be able to obtain a dismissal on other grounds[73] or because they merely had been attempting to avoid induction as long as possible. By definition, all persons in this group whose cases were dismissed prior to trial would have chosen to submit to induction rather than face a trial if that decision had been forced upon them.[74]

The final group is composed of those persons who weighed the alternatives and decided that the risk of a trial and possible sanctions was preferable to submitting to induction. It is with this group that this analysis is concerned, for this group was not deterred by the possible criminal sanctions for their actions. There is some difficulty in deciding who should be included in this group. All persons whose cases were not dismissed prior to trial are included because these persons clearly chose to face the risks of a final judicial determination of their cases as an alternative to complying with the draft laws. However, those persons who would have been prepared to stand trial, but whose cases were dismissed prior to adjudication must also be included, since they too were not deterred by the threat of punishment.[75]

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[71] *See* Note, *supra* note 34, at 371-72.

[72] *See* notes 34-37 *supra* and accompanying text.

[73] It is impossible to distinguish in the data between those cases which were dismissed because the defendant had an iron-clad case for dismissal, and those which were dismissed when the case for dismissal was not so clear. *See* Note, *supra* note 34, at 373. *See also* note 75 *infra* and accompanying text.

[74] To count any of these individuals as true evaders would not be proper since they were deterred by the sanctions or for other reasons chose to submit to induction.

[75] There is the possibility that some persons whose cases reached trial were certain of an acquittal in final adjudication, and so should not be included in the true evader category. The number of individuals in this category, if any, is probably small. *See* Note, *supra* note 34, at 372-73 nn.91-98. Thus, the analysis is concerned with persons who refused to comply with an induction order and whose state of mind was such that they were willing to go to trial after having had an opportunity to consider possible sanctions for refusing to comply. Some of these persons may have received a dismissal in any event, but should nevertheless be included because they had decided that the possible sanctions for their actions were low enough to risk evading the draft; some were not prepared to stand trial, and therefore should not be included.

The available data on the disposition of cases of persons who were indicted for draft evasion, but subsequently received dismissals of the charges against them, do not reveal which persons were true evaders and were therefore prepared to stand trial, which persons were pressing claims that they were certain would lead to dismissal and who therefore did not have to consider the potential sanctions for evasion, and which persons were merely trying to avoid induction as long as possible.[76] In the study it is necessary to account for the ambiguity in the data over how many of the dismissals were "true evaders". Therefore, the study considers five different estimates of the actual number of true evaders in the dismissal population. The numerator of the evasion rate is the number of cases that actually proceeded to trial plus, respectively, 0%, 25%, 50%, 75%, and 100% of the cases dismissed prior to trial. The entire range of possibilities of the number of true evaders in the dismissal population is thus considered.[77]

The data for the number of draft evasion cases that proceeded to trial,

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[76] The court file on a case itself rarely gives the reason for a dismissal. *See* Note, *supra* note 54, at 573 n.99. An examination of a small, and very possibly biased, sample of one investigator leads to an inference that approximately half of all dismissals occur when the defendant agrees to submit to induction, and half are dismissed because of procedural errors or mistakes in classification by the Selective Service Office. *Id.*

[77] Intentions cannot be observed, so it is impossible to specify exactly the actual number of true evaders. The number of true evaders, the numerator in the calculation of the evasion rate, *see* note 63 *supra* and accompanying text, is given by the following relationship:

$$E_{jt} = T_{jt} + \gamma D_{jt}$$

where

E_{jt} = number of true evaders in jurisdiction j, time period t,

T_{jt} = number of indictments filed in jurisdiction j, time period t, which ultimately were not dismissed,

D_{jt} = number of indictments filed in jurisdiction j, state t, which ultimately were terminated by dismissal before final adjudication,

γ = proportion of true evaders in the dismissal population. (γ is not directly observable.)

The value of γ was set at 0, 0.25, 0.50, 0.75 and 1.00 in successive trials of the model. If *all* the dismissals would have been willing to stand trial, $\gamma = 1$; if *none* would have been willing to stand trial, $\gamma = 0$.

Of course, if there were persons who knew with relative certainty that they would be acquitted in a trial and hence never had to consider seriously the sanctions, *see* note 75 *supra*, then the actual number of true evaders could be less than the minimum estimate of T_{jt}. Since the number of persons who knew they would be acquitted at trial is likely very small, *see* note 75 *supra*, the error introduced by not accounting for this possibility is minimal.

The same value of γ is used in all states and time periods. This is probably a conservative assumption in that if γ does vary across jurisdictions or time periods, the variations are likely to be of the kind that will reduce the magnitude of the estimated association between evasion rates and sanctions. Consider a state where the federal courts applied relatively severe sanctions. A plausible speculation is that in such a state, legal dismissals of true evaders are less than average. As a consequence, the true evasion rate in that state will be overstated by using the same value of γ as in the other less severe states. Similarly, the true evasion rate in a state with more lenient sanctions and a higher rate of dismissals is likely to be understated by using a uniform value of γ across states. Thus, using the same value of γ for all states results in an understatement of the influence of sanctions on evasion rate.

the number of dismissals of draft evasion cases, and the sentences imposed on those found guilty were obtained from the records of the Administrative Office of the United States Courts.[78] The Selective Service System provided the data on the draft calls by states.[79]

B. *Sanction Measures*

The model considers two distinct variables as legal sanctions for draft evasion: (1) the proportion of defendants found guilty, and (2) the expected prison sentences for those who refused to comply with an induction order. The probability of conviction is included as a sanction variable distinct from the expected sentence because the stigma associated with a conviction may be itself a deterrent to the commission of crime.[80] Since draft evaders only rarely had prior criminal records,[81] the stigma associated with conviction for a felony could be a major disincentive to evasion.[82] The expected sentence for all those who went to trial is used rather than the average sentence for those found guilty because it is hypothesized that a potential draft evader considers not only the penalty imposed on a convicted draft evader, but the probability that the penalty will be imposed.[83]

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[78] The Administrative Office of the U.S. Courts provided to the authors computer tape data on all criminal cases terminated in the federal courts. Each record supplied included the exact charge for which the individual was indicted, the charge at the time the case was terminated (either by dismissal or final adjudication), the disposition, dates of filing and termination, and if convicted, the defendant's age, race, sex and sentence imposed.

The data are on file with the authors.

[79] Copies of these unpublished data may be obtained by writing to the authors.

[80] *See* notes 121-122 *infra* and accompanying text.

[81] Federal law prohibited the induction of a convicted felon. 10 U.S.C. § 504 (1969).

[82] *See* note 124 *infra* and accompanying text.

[83] An unconditional measure for the expected sentence measure is based on a decision-theoretic model of draft evasion.

Suppose an individual is confronted with a lottery where he is found guilty with probability P_G, and if guilty, he receives a sentence S_1 with probability P_1, or a sentence S_2 with probability $P_2 = 1 - P_1$. If he is an expected utility maximizer, then he will evaluate the lottery as follows:

$$E(D) = P_G D_G + P_G P_1 D_1 + P_G P_2 D_2$$

where:

$E(D)$ = expected disutility of the lottery,

D_G = disutility simply to a finding of guilt,

D_1 = disutility of a sentence S_1

D_2 = disutility of a sentence S_2

The disutilities of sentence, D_1 and D_2, respectively, are weighted by the unconditional probabilities of their imposition, $P_G P_1$ and $P_G P_2$.

An individual makes the evasion decision prior to trial. Therefore, the pre-trial weighting is the proper expected utility characterization of the disutilities associated with each sanction. The expected-utility characterization also indicates that unconditional sanction measures should be used in estimation. The conditional sanction measures, P_i $(i = 1,2)$ are, however, incorporated into the unconditional measures, $P_G P_i$, and so they continue to have an influence, as intuition would suggest. A model which includes only average sentence as its

The case disposition information on the records provided by the Administrative Office of the United States Courts is used for calculating sanction variables for each State.[84] The probability of conviction for each year is estimated as the proportion of convictions among the defendants who were tried in that year.[85] The expected sentence is calculated as the product of the probability of conviction and the average sentence given to those convicted.[86]

C. *Social and Economic Variables*

The data for percent of the population living in urban areas, percent of the population that is black, median education for persons over twenty-five, median real family income, and percentage of the population classified as poor are taken directly from the state summary information of the United States Census for 1970.[87] The 1971 values of these variables were obtained by extrapolating linearly the trends in the variables between 1960 and 1970.[88]

D. *Other Variables*

To avoid interpreting any time and regional differences in both evasion rates and sanction variables as an effect of the sanction levels on evasion rates, time and regional categorical variables[89] are included in some specifications of the model. The regions used for the regional categorical variables approximately correspond to the regions of the United States used by professional pollsters in their classification of the states.[90]

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specification implicitly assumes that potential draft evaders are risk-neutral with respect to sentence, that is, that each marginal unit of sentence has equal disutility. Models that included the sample estimate of the second moment of the sentence distribution(ES^2)in each state were estimated. (The second moment is the expected value of the square of the sentence.) The estimated associations were found not to be statistically significant, suggesting risk neutrality over the observed range of S. A definite conclusion on the risk-taking behavior of the draft population, however, is not possible, since a high correlation of 0.65 between the expected sentence and ES^2) makes it difficult to separate the effects of these two variables.

[84] *See* note 78 *supra*.

[85] *Id.*

[86] *See* note 83 *supra*.

[87] U.S. BUREAU OF THE CENSUS, COUNTY AND CITY DATA BOOK 1972, at 2-13 (1973).

[88] The 1971 value for each variable is the 1970 value of the variable added to one-tenth of the total change in the variable from 1960 to 1970. This change may be positive or negative.

[89] A categorical variable, or dummy variable, is one that assumes a value of either one or zero and is included to estimate the effect of the presence or absence of the variable. For example, there are three categorical variables designed to capture regional effects. For an observation in a state in the Midwest region the midwestern regional categorical assumes a value of one and all other regional categorical variables assume values of zero, so that any effect on the draft evasion rate associated with the midwestern region will be reflected in the coefficient of this variable. For a more complete discussion of categorical variables, their use and interpretation, see A. GOLDBERGER, *supra* note 24, at 218-227 or J. JOHNSTON, *supra* note 24, at 218-41.

[90] Gallup divides the country into four regions: southern, eastern, midwestern and western. In this study, categorical variables, *see* note 89 *supra*, are included for the southern, eastern, and midwestern region, so that the regression coefficients, of the categorical variables, *see* note 95 *infra*, reflect the regional differences relative to the western region. *Id.*

Because differences among states in their citizens' attitudes regarding the morality of the Viet Nam war could influence draft evasion rates, a measure of these attitudes in each state is included in the model.[91] It is difficult to find fully satisfactory data that reflect these attitudes.[92] Data from public opinion polls are one possible source of this information,[93] but the Gallup Poll for the years 1970 and 1971 included no questions dealing directly with the morality of the Viet Nam war. One question that was asked, however, contains some information about the public's attitude about the morality of the war: "In view of the developments since we entered the fighting in Vietnam, do you think that the U.S. made a mistake sending troops to fight in Vietnam?" The percentage of "yes" answers to this question in each state provides the public attitude variable for the model.[94]

V. Model Estimation and Results

Regression analysis is used to estimate the association between the sanctions and the evasion rates.[95] Regression analysis cannot establish causal relationships.[96] It can only provide estimates of the magnitude and statistical significance of associations between a "dependent" variable and each "independent" variable.[97] Whether associations indicate causation is a matter of judgment. When non-experimental data are used in an analysis, extreme care in making those judgments is necessary.[98]

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[91] The hypothesis is that attitudes about the morality of the war could have a significant impact on an individual's choice of whether or not to evade the draft. Inclusion of a public opinion variable is an attempt to avoid interpreting this impact as an effect of sanctions on the evasion rate.

[92] A content analysis of the tone of articles and the editorial opinions in the leading newspapers of each state for attitudes about the morality of the war was considered. This approach was rejected because any measure so developed would be based inherently on many arbitrary assumptions and would leave too much room for subjective judgments.

[93] There are, however, considerable limitations in using this data. Gallup polls are not sufficiently large nor appropriately stratified to estimate statewide opinion directly from the poll data. A procedure has been developed for synthesizing statewide opinion from regional data. *See* R. Weber, Public Policy Preferences in the States (1971) (Institute of Public Administration, Indiana University). That procedure was used for developing the estimates of public opinion by state.

[94] An affirmative reply to this question need not imply belief that U.S. involvement in the Vietnam war was immoral. An affirmative answer could simply reflect disappointment that the war was not going well. There is evidence, however, that affirmative responses were strongly associated with a negative view on the morality of U.S. involvement. The "mistake" question was also asked in July, 1967, and the question, "Do you believe that U.S. involvement in Vietnam is moral?" was asked in April, 1967. The cross-state correlation of affirmative replies to these two questions is -0.58. This strong negative correlation suggests that the "mistake" question may be a reasonably adequate substitute for the desired moral opinion variable.

The shortcomings of the opinion variable may be mitigated to some extent by the inclusion of the other non-sanction variables. The socio-economic, regional and time variables used in the model may also reflect public attitudes about the war.

[95] Regression analysis is a basic technique of statistical estimation treated in detail in all econometric and most basic statistics texts. *See, e.g.*, A. Goldberger, *supra* note 24, at 156-212; J. Johnston, *supra* note 24, at 121-320. Ordinary least squares regression analysis, used in this Article, provides an estimate of the relationship between a dependent variable (the draft evasion rate), and several independent variables (the sanction and "other" variables). The estimated relationships are given as a coefficient for each independent variable that reflects the association between the independent variable and the dependent variable. The magnitude of a coefficient reflects the strength of the associations between the dependent and the independent variable; the sign of the coefficient indicates the direction of the association.

Regression analysis also provides an estimate of the "statistical" significance of an association—that is, it provides an estimate of how likely the estimated association results from chance variations in the dependent and independent variables, rather than from a true association. *See* note 110 *infra*.

[96] Regression analysis indicates only the presence or absence of a statistical association between variables. *See* note 95 *supra* and note 98 *infra*.

The data described in the previous section provided state-by-state estimates in two time periods for each variable.[99] Each of five estimates of the evasion rate, reflecting different partitions of dismissals among true evaders and non-evaders,[100] is used in four different model specifications. Each model specification includes all the social and economic variables, and the public opinion variables. The four model specifications differ only in whether the regional and time categorical variables are individually included or not.[101]

There is no theoretical basis for choosing the functional form[102] relating evasion rates to the independent variables. In order to test the sensitiv-

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[97] *See* note 95 *supra*.

[98] Given a statistical association between two variables, *x* and *y*, it is never certain from the regression analysis alone whether changes in variable *x* cause observed changes in variable *y*, whether changes in variable *y* cause changes in variable *x*, or whether changes in some third variable *z* cause changes in both variable *x* and variable *y*. Causation must be inferred from an examination of external information about the relationships among the variables.

In experimental situations, two groups, equivalent in all respects, are created by a randomized process. One group (the experimental group) is "treated"; the other group (the control group) is not. If the experiment is properly executed, the only systematic differences between the groups are due to the "treatment", and it is reasonable to infer that the differences are in fact *caused* by the treatment. Such an inference is not so easily made when the data are non-experimental.

[99] *See* notes 78-79 *supra* and accompanying text. The states with smaller populations have very few terminations in any year, so they do not provide sufficient data for computing with precision the sanction variables. All states with fewer than ten terminations in a year were excluded from the sample. This excluded roughly half the states, leaving a total of fifty-three observations for the two years used in the analysis. Twenty-four states, representing 80% of the 1970 U.S. population, were included in the data for both years. Twenty-one states were in neither sample; five were included only in one year. States included for both 1970 and 1971 were: California (Western), Colorado (Western), Florida (Southern), Georgia (Southern), Illinois (Midwest), Indiana (Midwest), Kansas (Midwest), Louisiana (Southern), Maryland (Southern), Michigan (Midwest), Minnesota (Midwest), Missouri (Midwest), New Jersey (Eastern), New York (Eastern), North Carolina (Southern), Ohio (Midwest), Oregon (Western), Pennsylvania (Eastern), South Carolina (Southern), Tennessee (Southern), Texas (Southern), Virginia (Southern), Washington (Western), and Wisconsin (Midwest). States included for only 1970 were Alabama (Southern) and Oklahoma (Southern). States included for only 1971 were Iowa (Midwest), Massachusetts (Eastern), and New Hampshire (Eastern).

[100] *See* note 77 *supra* and accompanying text.

[101] Specifically, the model specifications are:

$$q = f(p,s,u,b,e,y,l,o,r_e,r_{mw},r_s,t)$$

$$q = f(p,s,u,b,e,y,l,o,r_e,r_{mw},r_s)$$

$$q = f(p,s,u,b,e,y,l,o,t)$$

$$q = f(p,s,u,b,e,y,l,o)$$

where the variables are those given in Section III of this Article, at note 51 *supra*, and r_e, r_{mw}, and r_s are respectively eastern, midwestern, and southern regional categorical variables, t is a time categorical variable, and f is an ordinary linear sum of the variables. *See* note 89 *supra* and accompanying text.

[102] A basis for choosing among functional forms might exist where something more is known (or suspected) about the mathematical nature of the dependency. In the social sciences, unlike the natural sciences, it is rarely possible to specify the functional relationships between the phenomenon and its causes

ity[103] of the results to alternative forms, two were selected: (1) draft evasion rate as a linear sum of the independent variables[104] and (2) a logistic transformation[105] of draft evasion rate as a linear sum of the independent variables.

In sum, five different possibilities for the evasion rate are used in four separate model specifications of draft evasion in each of two functional forms, for a total of 40 different regressions. Since there is no theoretical way to determine which of the regressions best measure the association

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[103] For the most part, previous tests of the deterrence hypothesis have not tested for sensitivity to functional forms. *See* Nagin, *supra* note 7.

The importance of testing for functional form can be seen by contrasting two recent studies. Ehrlich, *Deterrent Effects*, *supra* note 5, specified the homicide rate as a multiplicative function of a variety of socio-economic, demographic and sanction variables and found a statistically significant, *see* note 110 *infra*, negative association between homicide rates and the probability of execution, which he interpreted as evidence of a deterrent effect of capital punishment. Two later investigations failed to find such a negative association when the homicide rate was specified as a linear function of these same variables. P. Passell & J. Taylor, The Deterrent Effect of Capital Punishment: Another View (March 1975) (unpublished Columbia University Discussion Paper 74-7509), *reprinted in* Reply Brief for Petitioner at Appendix E, Fowler v. North Carolina, 96 S. Ct. 3213 (1976) (mem.); Bowers & Pierce, *supra* note 5, at 199. *See generally Yale Law Journal Symposium*, *supra* note 4.

[104] The assumed relationship is of the form $Y = a_1x_1 + a_2x_2 + \ldots + a_nx_n$, where Y is the dependent variable, $x_1, x_2 \ldots x_n$ are the independent variables, and $a_1, a_2 \ldots a_n$ are the estimated regression coefficients. *See* A. GOLDBERGER, *supra* note 24, at 156-57; J. JOHNSTON, *supra* note 24, at 123-25.

[105] The logistic transformation is:

$$(a)\quad L(q) = \ln \frac{q}{1-q}$$

In contrast to q, which is bounded in the interval (0,1), and which may suffer biases in parameter estimates thereby, NERLOVE AND PRESS, UNIVARIATE AND MULTIVARIATE LOG-LINEAR AND LOGISTIC MODELS (1973) (Rand Corp.), the logistic transformation is not bounded and varies from $(-\infty, +\infty)$ over the range of q. The logic of using this transformation may be understood by considering the following functional relationship between q and its determinants:

$$(b)\quad q = \frac{e^{X\theta}}{1+e^{X\theta}}$$

where:

$X = (1 \times K)$ vector of independent variables,

$\theta = (K \times 1)$ vector of parameters.

In this form, q is still a probability, since (b) varies between (0,1). It is also monotonic with any x. (Thus, for example, if X were the expected sentence and assuming θ is negative, then longer sentences would result in lower evasion rates.) Now, it follows from (b) that:

$$(c)\quad 1 - q = \frac{1}{1+e^{X\theta}}$$

Taking the natural logarithm of the ratio of equation (b) to equation (c), we find:

$$(d)\quad \ln \frac{q}{1-q} = X\theta$$

The left-hand side of equation (d) is in the form of the transformation given in (a), and the right-hand side of (d) is linear and so may be estimated by linear regression.

The function in (b) is called the "logit" function. Following its successful use in modelling individual between draft evasion rates and criminal sanction levels,[106] the results of the regressions must be carefully compared and analyzed for the sensitivity of estimated deterrent effects under different specifications of the model. If the results are found to be consistent under different specifications, then conclusions can be drawn with greater confidence. Complete results of the regressions are presented in the Appendix.

Since the magnitude of a regression coefficient depends on the units in which the variables are measured, it is difficult to make meaningful direct comparisons of the coefficients of the variables in the various regressions. To avoid this difficulty, an "elasticity" — defined as the percentage change in the dependent crime level variable associated with a one percent change in an independent variable — is calculated for each sanction variable.[107] Thus defined, the "expected sentence elasticity" and the "probability of conviction elasticity" are insensitive to the units in which the variables are measured, and therefore provide useful measures for comparing the results of the regressions.[108]

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choice behavior in such areas as choice of transportation mode, *e.g.*, S. WARNER, STOCHASTIC CHOICE OF MODE IN URBAN TRAVEL: A STUDY IN BINARY CHOICE (1962), and college choice, *see* Kohn, Manski & Mundell, *An Empirical Investigation of Factors Which Influence College Going Behavior*,—ANNALS OF ECON. & SOC. MEASUREMENT—(forthcoming), this article assumes that the probability of evasion follows the logistic function.

[106] *See generally* notes 93-98 *supra* and accompanying text.

[107] For example, if the estimated model is of the form $q = a_1 p + a_2 p t_G$ where q is the evasion rate, p is the probability of conviction and t_G is the expected sentence given a conviction $(t = t_G p)$, and a_1 and a_2 respectively are the estimated coefficients of p and t. Then, for the linear form, the elasticity of the evasion rate with respect to the probability of conviction, E_p, and the elasticity of the evasion rate with respect to the expected sentence rate, E_t, would be calculated as follows:

$$(1) \qquad E_p = \frac{\partial q}{\partial p} \cdot \frac{p}{q} = (a_1 + a_2 t_G) \frac{p}{q}$$

$$(2) \qquad E_t = \frac{\partial q}{\partial t_G} \cdot \frac{t_G}{q} = \frac{a_2 t_G p}{q}$$

where,

$\frac{\partial q}{\partial p}$ and $\frac{\partial q}{\partial t_G}$ are, respectively, the partial derivatives of q with respect to p and t_G. Partial derivative is a mathematical expression representing the changes in one variable (q) associated with an absolute change in another variable (p or t_G), with all other variables remaining unchanged. A change in t can be accomplished by a change in either p or t_G. To examine the effect on q of a unit change in t only, holding p constant, the change must be accomplished through a change in t_G. Thus, E_t is calculated as a function of $\frac{\partial q}{\partial t_G}$. The formulation of the model, however, requires that a unit change in p will also affect t, so that effect must be included in E_p. Further analysis focuses on the effects on q from the stigmatization effect measured by a_1 only. Multiplication of the partial derivatives here by $\frac{p}{q}$ (or $\frac{t_G}{q}$) makes this change the *percentage* change in q associated with a unit *percentage* change in p (or t_G).

Obviously, the elasticity could be sensitive to the points at which p, t_G and q are measured, so that care must be exercised in attempting to use the same value of an elasticity over large ranges of variables.

[108] That is, since elasticities are not influenced by the units in which the variables are measured, the effects of different model specifications and model forms can be assessed by comparing elasticities. Such an assessment is not possible by directly comparing the coefficients themselves.

Table 1 gives the coefficients and elasticities of the sanction measures for the two functional forms and the four model specifications, with half the cases dismissed prior to trial counted as cases of true evasion.[109] The dominant feature of the results in Table 1 is the consistently significant[110] negative association between the evasion rate and probability of conviction, and the insensitivity of this association to changes in model specification and functional form. The probability of conviction elasticities are of uniformly larger magnitude[111] than the expected sentence elasticities. The latter are unstable and statistically significant only when the time categorical variable is absent from the specification.

The coefficients of the probability of conviction decrease monotonically[112] with the percentage of nondismissal cases counted as evaders.[113] Therefore, the sensitivity of the results to the percentage of nondismissal cases counted as evaders can be examined by comparing the elasticities at the extreme values of this percentage. Table 2 presents the probability of conviction elasticities for the two functional forms in each of the four model specifications, for both 0% and 100% inclusion of nondismissal cases as true evaders. Examination of the table reveals that the elasticities are relatively insensitive to the percentage of nondismissal cases counted as evaders. The difference between the mean value of the probability of conviction elasticities, across all model specifications and forms, where 100% of the nondismissal cases are counted as evaders, and the same mean value where 0% are counted, is 6%. Also, the absolute magnitude of the probability of conviction elasticities declines on average 7% when the regional categorical variables are included in the regressions compared to when the regional categorical variables are not included. It therefore can be concluded that these factors do not greatly influence the association between draft evasion and sanction levels.

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[109] The analysis considers five possibilities of the number of evaders. *See* note 77 *supra* and accompanying text.

[110] In statistical analysis, there is always a concern with whether an observed association is "statistically significant"—that is, whether the association truly exists or is simply a result of random fluctuations in the data. An observation is "statistically significant" when the probability that it could have occurred purely by chance is sufficiently small, and a probability of 5% or less is generally regarded as significant. A statistical measure called a "t-statistic" is used to calculate the probability that an observation could have occurred by chance. When the magnitude of the t-statistic is greater than 1.65 in a "one-tailed" test, the chance that an observation occurred by chance is less than 5%. *See, e.g.*, J. JOHNSTON, *supra* note 24, at 133-34.

[111] All elasticities discussed are negative. Discussion of the magnitude of elasticities in the text is with reference only to absolute magnitude (that is, the size of the number, without regard to whether the number is positive or negative). Hence, an elasticity of -2.00 is referred to as having greater magnitude than an elasticity of -1.50.

[112] One variable is said to decrease monotonically with another variable when changes in the first variable are always associated with changes in the opposite direction in the other variable. That is, when one increases, the other decreases. Thus, only the extreme values of *y*, 0% and 100%, are needed to cover the entire range of variations of *q* due to *y*. Intermediate values of *y* would be associated with intermediate values of *q*.

[113] *See* notes 79 *supra* and accompanying text.

TABLE 1—ESTIMATED COEFFICIENTS AND T-STATISTICS AND ELASTICITIES OF PROBABILITY OF CONVICTION AND EXPECTED SENTENCE SANCTION VARIABLES WHERE HALF THE DISMISSALS ARE COUNTED AS EVADERS ($\gamma = .50$)

Linear Form

	Regional and Time Variables	Regional but No Time Variable	Time but No Regional Variable	No Time or Regional Variables
Probability of Conviction	$-.475 \times 10^{-3}$ (-2.59)*	$-.542 \times 10^{-3}$ (-2.45)	$-.456 \times 10^{-3}$ (-1.86)	$-.504 \times 10^{-3}$ (-1.92)
Probability of Conviction Elasticity	-1.62†	-2.20	-1.74	-2.17
Expected Sentence	$.125 \times 10^{-3}$ (.58)	$-.391 \times 10^{-3}$ (-1.76)	$-.153 \times 10^{-3}$ (-.54)	$-.552 \times 10^{-3}$ (-2.11)
Expected Sentence Elasticity	.078	-.25	-.10	-.36

Logistic Form

	Regional and Time Variables	Regional but No Time Variable	Time but No Regional Variable	No Time or Regional Variables
Probability of Conviction	$-.134 \times 10^{-4}$ (-1.82)	$-.166 \times 10^{-4}$ (-1.75)	$-.145 \times 10^{-4}$ (-1.66)	$-.169 \times 10^{-4}$ (-1.69)
Probability of Conviction Elasticity	-1.23	-1.68	-1.29	-1.79
Expected Sentence	$.676 \times 10^{-3}$ (.77)	$-.178 \times 10^{-1}$ (-1.87)	$-.406 \times 10^{-2}$ (-.40)	$-.234 \times 10^{-1}$ (-2.36)
Expected Sentence Elasticity	.10	-.28	-.063	-.36

*Numbers in parentheses are t-statistics for the Estimated Coefficient
†Elasticities are computed at the mean values of each variable.

The elasticities of the evasion rate are appreciably influenced by the functional form of the model specification. Table 2 also shows that use of the logistic form in each model reduces the mean value of the magnitude of the probability of conviction elasticities by approximately 23% compared to when the linear form is used. Since there is no theoretical or empirical basis for choosing between forms,[114] the consideration of alternative forms provides merely a basis for estimating a possible range for the probability of conviction elasticity. Even with the conservative estimates provided by the logistic form, the probability of conviction elasticity has a mean value of -1.51. The mean value of this elasticity in the regressions using the linear form is -1.95.

The inclusion of the time categorical variable decreases the magnitude of the probability of conviction elasticity by approximately 26% compared to the magnitude of this elasticity in regressions that do not include the time categorical variable.

TABLE 2—PROBABILITY OF CONVICTION ELASTICITIES

		Time Variable Omitted		Time Variable Included	
		Regional Variables Omitted	Regional Variables Included	Regional Variables Omitted	Regional Variables Included
Linear Form	No Dismissals Counted As Evaders ($y=0$)	-2.20	-2.20	-1.82	-1.65
	All Dismissals Counted As Evaders ($y=1$)	-2.16	-2.20	-1.70	-1.61
Logistic Form	No Dismissals Counted As Evaders ($y=0$)	-1.89	-1.78	-1.50	-1.20
	All Dismissals Counted As Evaders ($y=1$)	-1.77	-1.67	-1.28	-1.00

Overall Mean:	-1.73
Mean Effects of Factors:	
All Dismissals Counted as Evaders (Vs. No Dismissals Counted as Evaders):	.12
Regional Variables Included (Vs. Regional Variables Omitted):	.13
Logistic Form (Vs. Linear Form):	.44
Time Variable Included (Vs. Time Variable Omitted):	.51

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[114] *See generally* notes 98 & 102 *supra*.

In attempting to identify the major sources of variation due to the time variable, it is insightful to note that the probability of conviction variable appears twice in each regression, once explicitly as a specified sanction variable, and once implicitly as a multiplicative factor in the expected sentence sanction variable.[115] It is possible to partition the probability of conviction elasticity into two components: one that reflects the effects of the probability of conviction on the expected sentence, and one that reflects simply the independent effects of the possibility of conviction for draft evasion, regardless of the sentence, if any, imposed — a "stigma" component.[116] For the linear functional form of the model, the partition of probability of conviciton elasticity is:

$$E_p = \frac{a_1 p}{q} + \frac{a_2 s_G p}{q}.$$

For the logistic functional form:

$$E_p = a_1 p(1-q) + a_2 s_G p(1-q),$$

where q is the evasion rate, p is the probability of conviction sanction

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[115] The expected sentence variable is the sentence conditional upon conviction multiplied by the probability of conviction. *See* notes 82-83 *supra* and accompanying text.

[116] The term "stigma" originated with the Greeks, who used it to refer to bodily signs that exposed something unusual and bad about the moral status of the bearer. E. Goffman, Stigma 1 (1963). Today, the term is applied to any undesirable attribute that makes the person possessing it different from others in the sociological and psychological categories to which he belongs, thereby reducing him from a whole and usual person to a tainted and discredited one. The various stigmatizing attributes can range from physical abnormalities and deformities to mental or moral blemishes, but all share the same characteristic of constituting an undesired differentness from the stereotype of what its possessor should be, causing those he meets to treat him as inferior. It should be noted, however, that any attribute is not discrediting as an entity in itself, but depends almost entirely upon the social identity of the bearer for its effect. Thus the identical act of entering a public library may be applauded or at least accepted by the friends of a young student, but is viewed scornfully by the associates of a professional criminal. T. Parker & R. Allerton, The Courage of His Convictions 109 (1962). The loss of acceptance and respect that confronts the stigmatized individual results not only in discrimination at the hands of the "normals", but often engenders feelings of self-worthlessness and shame in the possessor. Thus, the disgrace of stigma may even be impossible to avoid by withdrawal from society.

The discovery that a person has committed a crime may stigmatize that individual, since the social disapprobation that accompanies the crime will attach to the criminal as well, and his community standing may suffer as a result. Conviction and possible imprisonment provide further humiliation, and relegate the accused to the socially disapproved status of felon or prisoner, a label which is likely to remain longer than the sentence of imprisonment itself. The difficulties encountered by the ex-convict in our society reflect in part the stigma that he must bear. *See, e.g.*, Martin, Offenders as Employees 39 (1962); Lasswell & Donnelly, *The Continuing Debate Over Responsibility: An Introduction to Isolating the Condemnation Sanction*, 68 Yale L.J. 869-99 (1959); McSally, *Finding Jobs for Released Offenders*, 24 Federal Probation, June, 1960, at 12-17. Even the accused who is later acquitted at trial faces societal sanctions both before and after victory in court. Schwartz & Skolnick, *Two Studies of Legal Stigma*, 10 Social Problems 133 (1962). In this respect, then, the criminal trial followed by conviction and sentencing has been described as a public degradation ceremony, in which the public identity of the convicted individual is lowered on a social scale. F. Zimring & G. Hawkins, *supra* note 1, at 79. Bentham referred to this stigmatization process as "punishments belonging to the moral variable, t_G is the expected sentence *given a conviction*,[117] a_1 is the estimated coefficient of the probability of conviction sanction variable, and a_2 is the estimated coefficient of the expected sentence sanction variable. The first term in each equation is the "stigma component." The second term in each equation is the "sentence component," which is identical to the expected sentence elasticity.[118]

It is possible that the expected sentence component of the probability of conviction elasticity contains some of the factors which influence this elasticity over time. Table 1 shows that the estimated coefficients of the expected sentence variables are significant only when the time variable is not included in the regression analysis. Additionally, the time and expected sentence variables have a strong negative correlation of -0.47. These facts suggest a confounding between the time and the expected sentence variables. The expected sentence component of the total probability of conviction elasticity has a maximum value of -0.36 in the regressions presented in Table 1. This is small in magnitude compared to the mean probability of conviction elasticity of -1.73 in the same regressions, and indicates that the dominant deterrent effect of the probability of conviction variable is associated with the stigma of conviction.

Because of the significance of the stigma component of the probability of conviction elasticity, it is useful to examine it in greater detail. Table 3 presents the elasticity of the evasion rate with respect to *the stigma component only* of the probability of conviction elasticity, in a format identical to that used in Table 2 for the probability of conviction elasticity itself. The elasticity of the evasion rate with respect to the stigma component, averaged over all specifications and model forms, is -1.58, compared to -1.73 for the identical average of the probability of conviction elasticity.

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sanction" and described its suffering as "losing a part of that share which he would otherwise possess of the esteem or love of . . . the community . . . ." J. BENTHAM, *Principles of Penal Law*, in 1 WORKS 455 (J. Bowring ed. 1962).

Not surprisingly, therefore, the mere threat of stigmatization can act as a very powerful deterrent to crime. In fact, psychologists have theorized that the danger of exclusion from the group is one of the most potent elements in the threat of punishment, forming a very real barrier to any actions that breach the group ideology. K. LEWIN, A DYNAMIC THEORY OF PERSONALITY 127 (1935). This fact has not escaped the thinking of legal minds either. As Andenaes notes, "[t]hat the offender is subjected to the rejection and contempt of society serves as a deterrent; the thought of the shame of being caught and of the subsequent conviction is, for many, stronger than the thought of the punishment itself." J. ANDENAES, THE GENERAL PART OF THE CRIMINAL LAW OF NORWAY 78 (1965). Empirical support for this conclusion may be found in the British Government Social Survey on deterrents to crime among adolescents. The youths in the study were asked to rank a number of possible consequences of arrest in order of importance. Over two-thirds of the juveniles regarded some unofficial disapproval reaction (such as "what my family would think about it") as the primary deterrent consideration. WILLOCK & STOKES, DETERRENTS AND INCENTIVES TO CRIME AMONG YOUTH AGES 15-21, at 41 (1968), *cited in* ZIMRING and HAWKINS, *supra* note 1, at 3.

[117] *See* note 85 *supra* and accompanying text.

[118] It follows from note 107 *supra* that for the linear form

$$E_s = \frac{a_1 S_G P}{q}$$

This result conclusively supports the proposition that the dominant component of the probability of conviction elasticity is the stigma component. The most significant factor affecting the results is the form of the model, which has a mean differential effect over all specifications of 24%. Regional factors and the effect of the proportion of the dismissal cases included in the evader category are relatively small: 1% and 8% respectively. The mean effect of the time variable is somewhat larger: 12%, but is considerably less than the effect of time on the probability of conviction elasticity. Thus, it can be concluded that much of the confounding effect of time on the association between the evasion rate and the probability of conviction is

TABLE 3—ELASTICITIES OF STIGMA COMPONENT OF PROBABILITY OF CONVICTION

		Time Variable Omitted		Time Variable Included	
		Regional Variaibles Omitted	Regional Variables Included	Regional Variables Omitted	Regional Variables Included
Linear Form	No Dismissals Counted As Evaders (γ=0)	-1.87	-2.02	-1.72	-1.80
	All Dismissals Counted As Evaders (γ=1)	-1.78	-1.91	-1.60	-1.67
Logistic Form	No Dismissals Counted As Evaders (γ=0)	-1.56	-1.53	-1.41	-1.30
	All Dismissals Counted As Evaders (γ=1)	-1.40	-1.38	-1.19	-1.10

Overall Mean: -1.58
Mean Effects of Factors:
All Dismissals Counted as Evaders
(Vs. No Dismissals Counted as Evaders): .14
Regional Variables Included
(Vs. Regional Variables Omitted): .02
Logistic Form (Vs. Linear Form): .44
Time Variable Included
(Vs. Time Variable Omitted): .21

related to the expected sentence component, rather than to the stigma component.[119] Therefore, it can be concluded that the stigma of conviction has been isolated as a sanction measure showing a strong negative association with the draft evasion rate. The association is quite insensitive to all aspects of model specifications except for form.[120]

VI. CONCLUSION

In this Article a significant negative association has been found between the probability of conviction and the draft evasion rate, using state-by-state data from the post-lottery period. This association is significant over a wide range of model specifications. The results also indicate that the stigma of conviction is the dominant factor in the association between draft evasion rates and the probability of punishment. The findings are consistent with the work of other investigators who have argued that the certainty of punishment has a stronger deterrent effect on crime than the severity of punishment.[121]

There is some difficulty in generalizing the results of this analysis to crimes other than draft evasion. Draft evaders are probably not representative of the typical criminal. Individuals with prior felony convictions are excluded from draft calls, and many draft evaders may have been from the middle class, while those who commit the more common index crimes are more likely to be poor and have had prior arrests.

Thus, the deterrent effect associated with the stigma of conviction may be less for these types of offenders than for draft evaders. On the other hand, if the socio-economic status and criminal records of draft evaders are similar to those who commit white collar crimes, the results might be more applicable to conclusions about the deterrent effect of sanctions on white collar crime rates.[122]

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[119] The stability of the coefficient of the probability of conviction, and a fortiori the stigma component, regardless of whether the regional and time variables are included in the model, provides some empirical evidence that this parameter estimate is not inconsistent due to serial correlation. The error term in a regression contains the effect of all variables omitted from the model that affect the dependent variable. These error terms will be serially correlated if the effect of omitted variables persists over time. By including the regional variables any persistent effects associated with regional differences are brought into the model (and thereby out of the error term). The time variable acts similarly to reduce serial correlation by bringing into the model any time trends in evasion rate that would otherwise be in the error term, possibly resulting in serial correlation. Since the magnitude and significance of the coefficient of the probability of conviction was unaffected by the inclusion of the time or regional variable, some evidence is provided that the results of this analysis concerning the probability of conviction are not being affected by serial correlation. *See generally* note 51 *supra*.

[120] The only independent variables (other than the sanction variables and time categorical variables) that are consistently significant are the regional categorical variables. The western states had markedly higher evasion rates than the rest of the country during the time period used in the study. *See* Appendix

The public opinion variable has an ambiguous association with the evasion rate. There are several possible interpretations of this finding. It may be that there is no association between the attitude of the general public toward the war and draft evasion rates, or it may be that the public opinion variable used in the analysis is not a good measure of public opinion.

The other independent variables are generally insignificant, although there is some evidence of a positive association between the median income and evasion rates.

[121] *E.g.*, Antunes & Hunt, *supra* note 4, at 161.

In view of the limitations of previous analyses, the strong negative association found in this analysis between draft evasion rates and the probability of conviction provides an important statistical confirmation of the existence of a deterrent effect.

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[122] The threat of stigmatization differs significantly from the threat of other types of consequences (such as pain or imprisonment) in that it is effective only with those whose status in the community will indeed be lowered, or who attach any importance to the views of others. *See* note 116 *supra*. The cross of criminal conviction will be borne as a stigma only if it is viewed by the relevant community as demoting its possessor to a lower social status. Thus, if the offender belongs to a social class in which the offense is not viewed as odious, then the stigma attached to being punished for that offense will be less than if the offense were viewed more seriously.

Moreover, once an offender is punished for a serious crime, and thereby becomes marked with its associated stigma, the threat of additional stigma for further offenses means very little to the offender. As Packer notes, "[d]eterrence does not threaten those whose lot in life is already miserable beyond the point of hope." H. PACKER, *supra* note 1, at 45. *See generally* note 116 *supra*.

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Enforcing the Selective Service Act: Deterrence of Potential Violators*

Herbert M. Kritzer†

A recent study by Alfred Blumstein and Daniel Nagin explored the question of whether criminal sanctions deterred potential draft violators[1] during the Vietnam War.[2] Blumstein and Nagin's primary concern lay not in the specific area of Selective Service enforcement, but rather in improving upon previous studies of the deterrent effect of criminal sanctions in general. Their reason for focusing on draft violations was that this area was relatively free of problems encountered by previous empirical studies of deterrence.[3] While this argument may be correct, Blumstein and Nagin, in placing their analysis solely within the context of previous deterrence studies, failed to give adequate consideration to the unique political context created by the Selective Service System,[4] the anti-war movement[5] and the war itself. It is ironic, then, that a study which set out to overcome problems with past deterrence analysis should demonstrate yet another important problem faced by such studies: the danger of abstracting a legal issue from the larger political, social and cultural context.

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[1] Blumstein and Nagin used the term draft *evasion* in their paper; draft *violation* is the term used here. This term was selected to avoid the negative connotations associated with evasion; WEBSTER'S NEW WORLD DICTIONARY OF THE AMERICAN LANGUAGE, COLLEGE EDITION (1964) defines "evasion" as "an avoiding of a duty, question, fact, etc. by deceit or cleverness." *Id.* at 502. The term "draft violation" is used to refer to an intentional noncompliance with the Selective Service Act.

[2] Blumstein & Nagin, *The Deterrent Effect of Legal Sanctions on Draft Evasion*, 29 STAN. L. REV. 241 (1977).

[3] Blumstein & Nagin, *supra* note 2, at 248-50. For a critique of the methodological problems of prior studies, see *id.* at 243-47; text accompanying notes 14-19 *infra*.

The power of criminal sanctions to deter potential criminal acts has been researched and debated by social scientists in recent years. A number of empirical analyses have shown a negative relationship between the crime rate and the certainty and severity of imprisonment. *See, e.g.*, Gibbs, *Crime, Punishment, and Deterrence*, 48 SW. SOC. SCI. Q. 515 (1968); Tittle, *Crime Rates and Legal Sanctions*, 16 SOC. PROB. 409 (1969); Tittle & Logan, *Sanctions and Deviance: Evidence and Remaining Questions*, 7 LAW & SOC'Y REV. 371 (1973); Tullock, *Does Punishment Deter Crime?*, 36 PUB. INTEREST 103 (1974). These studies have produced some fairly firm conclusions regarding the role of sanctions in the general deterrence process. ("General deterrence" refers to the punishment of actual offenders as a deterrent to potential offenders.) First, certain offenses are more amenable to deterrence than others, depending on the offender's specific motivation and degree of commitment to illegitimate behavior. *See* Chambliss, *Types of Deviance and the Effectiveness of Legal Sanctions*, 1967 WIS. L. REV. 703.

Blumstein and Nagin's disregard for political context appeared in several forms. First, they estimated draft violation rates from data measuring prosecution rates, failing to consider the effects of prosecutorial discretion in bringing cases to trial; the exercise of this discretion was affected by the political attitudes of prosecutors and the policies of administrations in Washington.[6] Second, they used the probability that those prosecuted would be convicted at trial to measure the probability of sanctions being imposed, and overlooked a peculiarity of draft violation cases: The facts of these cases were almost never in doubt, and acquittals were rare until the latter years of the war.[7] Third, Blumstein and Nagin failed to account for changes in the Selective Service System during the time period they studied.[8] Finally, in measuring the relationship between violation rate and sanctions imposed, Blumstein and Nagin followed other

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Second, the relative certainty of punishment—probability of detection and apprehension, probability of prosecution and conviction, and probability of incarceration—has been shown to be correlated with crime rates in a way consistent with the deterrence argument for a wide variety of offenses and in a wide variety of studies. *See* Gibbs, *supra* (homicide), Greenwood & Wadycki, *Crime Rates and Public Expenditures for Police Protection: Their Interaction*, 31 REV. SOC. ECON. 138 (1973) (property crimes); Vanduele, *The Economics of Crime: An Econometric Investigation of Auto Theft in the United States*, 1973 AM. STATISTICAL A., BUS. & ECON. STATISTICS SECTION 611. Finally, the evidence relating crime rates to severity of sanctions presents a mixed picture, with a few studies reporting significant relationships, but most reporting no relationship. *Compare* Gibbs, *supra*, *and* Ehrlich, *The Deterrent Effect of Capital Punishment*, 67 AM. ECON. REV. 397 (1975) (significant relationship found), *with* F. ZIMRING & G. HAWKINS, DETERRENCE: THE LEGAL THREAT IN CRIME CONTROL 260-62 (1973); Kritzer, *Sanctions and Deviance: Another Look*, 1975 IUSTITIA 18 (no significant relationships found), *and* Tittle, *supra* (relationship for homicide only).

[4] *See, e.g.*, D. DELLINGER, MORE POWER THAN WE KNOW (1975); M. USEEM, CONSCRIPTION, PROTEST, AND SOCIAL CONFLICT (1973).

[5] L. BASKIR & W. STRAUSS, CHANCE AND CIRCUMSTANCE: THE DRAFT, THE WAR, AND THE VIETNAM GENERATION (1978); J. DAVIS & K. DOLBEARE, LITTLE GROUPS OF NEIGHBORS: THE SELECTIVE SERVICE SYSTEM (1968); J. GERHARDT, THE DRAFT AND PUBLIC POLICY (1971).

[6] *See* notes 23-27 *infra* and accompanying text.

[7] *See* note 31 *infra* and accompanying text.

[8] *See* notes 43-45 *infra* and accompanying text.

studies of deterrence and examined the effects of such factors as wealth, race and education on the violation rate, but did not adequately investigate potential correlations between the draft violation rate and the political environment of the community.[9]

Part I of this Article evaluates the model Blumstein and Nagin used to examine the relationship between draft violation rates and the punishment of draft violators. Part II describes an "alternative model" that includes political factors which might affect both sanctioning of violators and violation rates. Part III reports the results of an analysis using the alternative model; the analysis finds a negative association between the rate of draft violations and only one aspect of the sanctioning process—probability of prosecution. Part IV compares the results of this analysis to those reported by Blumstein and Nagin, specifically questioning their conclusion that the stigma of a felony conviction was the prime deterrent of draft violations.

I. CRITIQUE OF BLUMSTEIN AND NAGIN

Blumstein and Nagin developed a model to test possible relationships between several independent variables and the dependent variable—the draft evasion rate.[10] The model's two central independent variables measured the likelihood of conviction and the expected prison sentence. The authors included eight additional variables to explain variations in the violation rate not associated with deterrence; most of these variables represented social and economic factors that sometimes correlate with crime levels. One variable, based on a single public opinion poll, was meant to account for public attitudes toward the Vietnam War in each state. A set of dummy variables was used to detect differences in the violation rate in four regions of the country. One other dummy variable was used in an attempt to account for the use of data in the same states for 2 consecutive years; data from 24 states for fiscal and calendar years 1970 and 1971 were included.[11]

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[9] *See* notes 48–55 *infra* and accompanying text.

[10] The method Blumstein and Nagin used is ordinary least squares regression analysis. Blumstein & Nagin, *supra* note 2, at 259. For a discussion of this technique, see note 79 *infra*.

[11] Blumstein & Nagin, *supra* note 2, at 251. The authors actually look at 40 different specifications, four for each of the 10 forms of the dependent variables they create. The eight specifications for each dependent variable allow the authors to test the significance of various combinations of regional and time dummy variables, as well as two forms of the model, *see id.* at 260–62. The results of the 40 tests are reprinted in an appendix to their article. *Id.* at 271.

The specific question asked by Blumstein and Nagin was whether variations in the certainty and severity of sanctions for draft violations among different jurisdictions could explain variations in the rate of such violations among those jurisdictions. Thus, the study was an analysis of marginal deterrence[12] using a cross-sectional design.[13]

As Blumstein and Nagin correctly pointed out, certain unique aspects of draft violation cases serve to eliminate a number of the conceptual problems usually found in analyses of the deterrence question.[14] Draft violators were aware of the potential penalties for their actions and had time to reflect before breaking the law.[15] Furthermore, problems of inadequate data are muted in an analysis of the deterrent effect of sanctions in draft cases; draft violations occurred primarily as a result of refusal to comply with an order from a draft board, and thus their incidence was easier to measure.[16] The probability of punishment was also simple to measure, because those punished for violating the draft were convicted for draft offenses, not for any lesser crimes, as can happen when criminals strike bargains with prosecutors.[17] A third difference is that imprisonment ordinarily reduces crime both by threatening punishment and incarcerating those who might commit the crime again. By contrast, sanctions could reduce the rate of draft violations only by the threat of imprisonment itself, because the Selective Service System seldom sought to induct a man who had been convicted of a draft violation.[18] Finally, the incidence of draft violation never became so high that it impaired the ability of the criminal justice system to levy the appropriate sanctions.[19]

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[12] There are two distinct aspects of the notion of general deterrence—absolute deterrence and marginal deterrence. *See* F. Zimring & G. Hawkins, *supra* note 3, at 13, 72. Absolute deterrence refers to whether the creation of a sanction, usually by legislative enactment, reduces or eliminates a particular type of behavior. The concept of absolute deterrence does not address differences resulting from variations in the nature of the sanctions themselves. Marginal deterrence, on the other hand, refers to whether a change in the certainty or severity of sanctions causes a decrease in a type of behavior. Most deterrence studies focus on marginal deterrence. In part, this reflects the early concern of researchers with the deterrent effects of the death penalty relative to those of long prison sentences. For a review of the early death penalty studies and marginal deterrence, see Bailey, *Murder and the Death Penalty*, 65 J. Crim. L. & Criminology 416 (1974). Moreover, most policy questions facing legislatures involve changing existing penalties rather than removing or imposing them, making the question of marginal deterrence more pertinent than the question of absolute deterrence.

[13] Studies of marginal deterrence are generally of two types: time series analyses, which look for covariation between penalties and crime rates over time, and cross-sectional analyses, which examine variations in these rates between a number of locations.

[14] Blumstein & Nagin, *supra* note 2, at 248.

[15] Deterrence theories assume informed and rational choice by the actor, and the draft violation cases provided a more than adequate opportunity for such choice. Because the institutional features of the Selective Service System sought to induce voluntary compliance before trial, the violator was likely to be aware of the consequences of his actions. *Id.* at 248-49.

A survey I conducted of draft resisters indicated that they had a good idea of the sentences received by other resisters at the time of their own violations; the actual penalty received by resisters I surveyed often was quite different from what they had expected, but only because of marked changes in sentencing practices between the time of their violations and the time they were actually sentenced. For a general report of this survey, see Kritzer, *Political Correlates of the Behavior of Federal District Judges: A "Best Case" Analysis*, 40 J. Pol. 25 (1978); Kritzer, *After Prison: The Thoughts of Resisters*, WIN Magazine, Sept. 12, 1974, at 14.

[16] For this reason, the data are *relatively* free of problems caused by errors in reporting and recording. Blumstein & Nagin, *supra* note 2, at 249.

Blumstein and Nagin, however, did not face squarely the special analytic problems presented by draft violations. During the Vietnam War, draft violations were a distinctly political matter, and the specifically political aspects of these cases demand special attention. First, defining a measure of the rate at which draft violations occurred presents difficulties. Second, the probability of conviction was so high for individuals actually brought to trial on draft charges that earlier steps in the enforcement process, such as probability of prosecution, must be considered. Finally, the nature of the social and economic environment (as measured by such indicators as racial heterogeneity, level of income or level of education), which has been found to be associated with other types of crime rates, may have had less influence on potential draft violators than did the nature of the political environment (as measured by indicators of local public opinion or of local political progressivism).

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[17] *Id.* Pleas of guilty to lesser offenses cause distortions in the statistics on the probability of imprisonment for a given sanction, particularly for serious offenses. *Id.* at 245.

[18] The problem of confusing incapacitation with deterrence does not exist for draft violators. *Id.* at 249. Strictly speaking, a person convicted of draft violations could be charged with future violations after he had served out his sentence. He could destroy his draft card, or he could be classified 1A and ordered for induction. In either case, a second prosecution could, in theory, occur. The Justice Department, however, had a policy of not prosecuting a second time any man who had completed a previous sentence for draft refusal, even if Selective Service processed him again after his release. HANDBOOK FOR CONSCIENTIOUS OBJECTORS 96 (12th ed. 1972). *See also* United States v. Hayden, 445 F.2d 1365 (9th Cir. 1971) (conscientious objector who had previously been acquitted of a draft violation charge was not required to report for preinduction physical).

[19] Blumstein & Nagin, *supra* note 2, at 249-50. L. BASKIR & W. STRAUSS, *supra* note 5, question this contention. They point out that only 3,000 of 210,000 men accused of draft offenses ever went to trial. Walton, Book Review, THE NEW REPUBLIC, April 29, 1978, at 34 (quoting L. BASKIR & W. STRAUSS).

A. *Problems in Determining Violation Rate*

Blumstein and Nagin estimated the number of individuals who violated the draft law and faced the risk of trial and conviction by focusing on two statistics reported by the Administrative Office of the United States Courts: the number of persons indicted in each state for draft violations and the number of persons brought to trial.[20] In their analysis, Blumstein and Nagin used each of these two statistics and a series of intermediate values to estimate the number of draft violators in each state.[21] Actually, these measures are indicators not of violation rate, but rather of the prosecution rate. Blumstein and Nagin ignored the fact that United States Attorneys exercised discretion in deciding whether to seek indictments against persons referred by the Selective Service to the Justice Department for prosecution,[22] and were influenced in these decisions by their own political attitudes and by priorities set in Washington. By failing to allow for these influences, Blumstein and Nagin used the number of indictments as the maximum number of violators and thereby seriously underestimated the actual number of draft violators.

Indictments did not inevitably follow from referral of a draft violation case to the local United States Attorney. Directives from the administration in Washington, organizational priorities of the Justice Department and attitudes of the local United States Attorneys all affected decisions to bring cases to trial. During the year the Nixon administration took office, the number of draft cases filed increased sharply.[23] This increase could have reflected a sudden rise in the number of draft violators, but more likely reflected the change in the administration.[24] Another very sharp increase occurred in fiscal year 1972;[25] this increase may have been caused by the transfer of responsibility for prosecuting draft violators from the Criminal Division of the Justice Department to the Internal Security Division in January 1971.[26] Finally, an examination of filings with specific judicial districts suggests that the local United States Attorneys exercised discretion: The number of draft filings in any particular district was likely to go up or down when a new United States Attorney took office.[27] Because Blumstein and Nagin's measure of the number of draft violators did not recognize the forces affecting draft prosecutions, it introduced a data problem similar to the one that use of the Uniform Crime Index data has introduced in other empirical studies of deterrence: Discretion in the reporting process distorts the measure of the violation rate.[28]

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[20] *Id.* at 256–57. Blumstein and Nagin assumed that most violators failed or refused to comply with induction orders; this assumption is probably correct. They worked with data tapes supplied at the Administrative Office of the United States Courts, *id.* at 257 n.78, and the Administrative Office's data coding scheme does not distinguish between different types of draft law violations.

[21] *Id.* at 256. The authors create five estimates of the number of actual evaders whose cases were dismissed prior to trial. The numerator of the evasion rate includes the number of cases that actually went to trial plus, respectively, 0%, 25%, 50%, 75%, and 100% of the cases dismissed prior to trial, in order to account for the ambiguity in the data concerning whether the dismissed cases represented "true evaders." *Id.* The results of their study are not greatly different for any of the five possible estimates of the actual evasion rate. *Id.* at 263, 270 app.

[22] Blumstein and Nagin assert that "virtually every refusal to comply [with an induction order] was followed by an indictment." *Id.* at 249. As will be discussed below, this argument is doubtful. *See* note 19 *supra*.

[23] Defendants charged with violation of the Selective Service Act rose from 1,192 in fiscal year 1968 to 1,744 in fiscal year 1969, a rise of 46%; in fiscal year 1970, the first 12-month reporting period entirely within the Nixon administration, the number of defendants rose to 2,833, a 138% increase over the last full period before the Nixon administration took office. ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS, FEDERAL OFFENDERS IN UNITED STATES DISTRICT COURTS, FISCAL YEAR 1973 Table H 10 (1976) [hereinafter cited as FEDERAL OFFENDERS (by appropriate year)].

B. *Probability of Conviction as a Sanction Measure*

1. *The high probability of conviction for draft violations.*

Blumstein and Nagin found a consistent relationship between violation rate and probability of conviction, defined as the proportion of violators who were actually convicted.[29] But what was implied by conviction or acquittal in draft cases? In draft violation cases there was seldom any question as to whether a person had committed the violation.[30] Nearly 90 percent of those prosecuted between 1967 and 1971 were convicted.[31] In analyzing the deterrence of draft violators, it is illogical to focus on the probability of conviction in the event of prosecutions, because the probability of conviction was so high that potential violators would have anticipated being found guilty if prosecuted. One would expect certainty of sanctions to play a role in the deterrence process; but in the case of draft violators, other aspects of certainty, such as probability of prosecution or probability of a prison sentence, were undoubtedly more important.

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[24] The number of persons referred to United States Attorneys did not increase appreciably over the period from fiscal years 1967 to 1969. In fiscal year 1967, 29,128 were referred, 29,485 in fiscal year 1968, and 31,831 in fiscal year 1969. SEMI-ANNUAL REPORT OF THE DIRECTOR OF SELECTIVE SERVICE, JULY 1 TO DECEMBER 31, 1969, at 10 (1973); SEMI-ANNUAL REPORT OF THE DIRECTOR OF SELECTIVE SERVICE, JULY 1 TO DECEMBER 31, 1968, at 10 (1970).

[25] The number of cases filed in fiscal 1972 rose to 4,906, a 65% increase over the previous year. FEDERAL OFFENDERS 1973, *supra* note 23, Table H 10.

[26] 1971 ANNUAL REPORT OF THE ATTORNEY GENERAL OF THE UNITED STATES 73 (1971).

[27] For tables describing the rise and fall of prosecutions, see FEDERAL OFFENDERS 1973, *supra* note 23.

One example of a sharp change with the change of United States Attorneys can be found in the District Court for Minnesota. The Democratic appointee was replaced by a Republican appointee on August 15, 1969 (fiscal year 1970 began on July 1, 1969). The prosecutions during fiscal year 1969 had totaled 14, FEDERAL OFFENDERS 1969, *supra* note 23, at 163, Table D 13; prosecutions increased over 500% to 85 during fiscal year 1970, FEDERAL OFFENDERS 1970, *supra* note 23, at 139, Table D 14.

[28] For an examination of discretion in the reporting of crimes, see PRESIDENT'S COMM'N ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, THE CHALLENGE OF CRIME IN A FREE SOCIETY 96–100 (1968) (the actual amount of crime in the United States is 13 times that reported in the Uniform Crime Reports). *See also* Seidman & Couzens, *Getting the Crime Rate Down: Political Pressure and Crime Reporting*, 8 LAW & SOC'Y REV. 457 (1974).

[29] Blumstein & Nagin, *supra* note 2, at 237, 268. Blumstein and Nagin also used a variable to measure severity of sanctions, which they found to be significant in one set of

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regression equations. Their data covered 2 years. Twenty-four states were included for both years and five states were included for only 1 year. *Id.* at 260 n.99. In order to correct for what they believed might be serial correlation, *see* W. MERRILL & K. FOX, INTRODUCTION TO ECONOMIC STATISTICS 415 (1970), in one set of equations they included a dummy variable for time (a variable coded 1 for 1 year and 0 for the other). When this variable was included in the equation, severity of sanctions was not significantly related to violation rate; however, when it was omitted, severity and violation rate were significantly related. All this shows is that as the war progressed into the 1970's, the violation rate was increasing over time, while, simultaneously, the severity of sentences imposed on draft violators was decreasing. The time dummy variable in fact controlled for this time effect, and when it was omitted a spurious relationship between violation rate and severity of sanctions appeared. The time dummy variable did little to solve the problem of including two observations from 24 states; to take care of this problem it would have been necessary to include 24 dummy variables (one for each of the states included twice in the "sample").

[30] If a violator *had* reported for induction, he would have been in the army, not in court.

[31] The disposition of cases not dismissed is summarized in the following table:

Fiscal Year	Indictments Not Dismissed	Plead Guilty	Convicted		Total Guilty	Acquitted	
			By Judge	By Jury		By Judge	By Jury
1967	772	538	141	69	748	34	31
%	100	69.7	6.3	14.8	96.9	1.8	1.6
1968	839	520	196	68	784	49	6
%	100	62.0	23.3	8.1	93.4	5.8	0.8
1969	997	511	252	137	900	88	9
%	100	51.3	25.3	13.8	90.3	8.9	0.9
1970	1263	570	321	136	1027	222	14
%	100	45.1	25.5	10.8	81.3	17.5	1.1
1971	1272	590	350	96	1036	217	19
%	100	46.4	27.5	7.5	81.4	17.5	1.5

FEDERAL OFFENDERS 1973, *supra* note 23, Table H 10.

2. *Interpretation of probability of conviction as a measure of stigma.*

When Blumstein and Nagin found that the probability of conviction correlated with the violation rate, but that the probable length of the prison term did not, they concluded that "the stigma of conviction is the dominant factor in the association between draft evasion rates and the probability of punishment."[32] They fail to account for other possible factors that could deter, such as a desire not to go to prison. Blumstein and Nagin's conclusion that "stigma"[33] was the prime deterrent would only be justified by their model if they eliminated other reasons why potential violators might seek to avoid any sanction.[34] Yet within some groups, draft violation was not negatively perceived and thus could not cause stigma even in the narrow sense.[35] A finding that certainty rather than severity was the significant deterrent does not lead inevitably to the conclusion that stigma was the primary influence on potential violators.[36]

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[32] Blumstein & Nagin, *supra* note 2, at 269.

Blumstein and Nagin calculated the elasticity of each of the two sanction variables because it would be difficult to make direct comparisons of their coefficients. *Id.* at 262. They defined elasticity as the percentage change in the violation rate associated with a 1% change in a sanction variable. The authors reported that the probability of conviction sanction variable was significant; they also reported the associated probability of conviction elasticity. The measure of elasticity actually has two components: The first is the change in violation rates associated with a 1% change in the probability of conviction rate. The second component represents changes in the draft violation rate associated with a change in the sanction variable caused by the 1% change in the probability of conviction. This second component reflects that the sanction variable implicitly incorporates a measure of the probability of conviction. *Id.* at 262 n.107. The authors isolated the two components of elasticity and concluded that the component representing the effects of the probability of conviction sanction variable—the stigma component—has the dominant deterrent effect. *Id.* at 266-67.

[33] Blumstein and Nagin appear to have defined "stigma" quite narrowly in a lengthy footnote. *See id.* at 266 n.116.

[34] If potential violators assumed that prosecution would result in a conviction and conviction would result in a jail sentence, and if the primary concern was with avoiding *any* prison sentence, then one would expect a relationship between certainty of sanctions and severity of sanctions that had nothing to do with probability of conviction.

[35] For persons active in the anti-draft movement, being convicted of and serving time for a draft violation was a badge of honor. One individual who had gone to prison noted that "I get published more often. . . . My ascent up the ladder wasn't hurt by my brief time in prison." Another said, "It was and remains the proudest experience of my life." H. Kritzer, Judicial Response to Protest: The Sentencing of Draft Resisters and Its Impact 224, 230 (1974) (Ph. D. dissertation, University of North Carolina).

[36] Blumstein and Nagin, however, were correct when they observed that felony convictions may have affected draft violators differently from ordinary criminals. *See* Blumstein & Nagin, *supra* note 2, at 269. Most defendants in Selective Service prosecutions had clean prior records, so the negative consequences of conviction apart from a prison sentence might have been more important. A registrant who had previously been convicted of a serious offense usually was found to be morally unfit for induction and was placed in Class I-Y,

3. *Accounting for Blumstein and Nagin's finding.*

How can Blumstein and Nagin's report of a consistent relationship between violation rate and probability of conviction be accounted for? A defendant in a draft case could have generally pursued either a political defense, attacking the morality of the war, or an administrative defense, claiming that the draft board had violated his right of due process. In fact, only an administrative defense was likely to be successful. A defendant who wanted to put forth an administrative defense would probably have requested a bench trial, since the basic issues were legal (and usually easily documented by records from the Selective Service). This surmise is consistent with the facts; in fiscal years 1970 and 1971, about 18 percent of the draft cases that were not dismissed resulted in acquittals,[37] and virtually all of these were acquittals in bench trials. In all federal cases during these two years, bench trials accounted for only 41 percent of the acquittals.[38] If acquittals resulted primarily from administrative errors by draft boards, the relationship between probability of conviction and violation rate is easy to explain: In those states where the draft boards made more administrative errors, violation rates would have been higher, and the probability of conviction lower. The fact that Blumstein and Nagin used an "overlapping" six-month lag[39] does not contradict this explanation, since the quality of administrative procedures of the various draft boards probably would have been relatively constant over time.

C. *Choice of Time Period*

Blumstein and Nagin chose to use data from the early 1970's because the draft lottery was then in operation, and those subject to induction were representative of all draft-age men.[40] During the late 1960's, many draft-age men obtained education deferments. A

Selective Service System, 32 C.F.R. § 1622.17 (1969), or Class IV-F, *id.* § 1622.44. Most young men refusing induction were, *therefore*, running the risk of marring previously clean records with a felony conviction.

One practical implication of a felony conviction that is arguably "stigmatic" is the effect of a conviction on future employability. *See* R. TAGGART, THE PRISON OF UNEMPLOYMENT: MANPOWER PROGRAMS FOR OFFENDERS (1972); PRESIDENT'S COMMISSION ON LAW ENFORCEMENT & ADMINISTRATION OF JUSTICE, TASK FORCE ON CORRECTIONS, TASK FORCE REPORT: CORRECTIONS 32-34 (1967). In some states various legal rights are also forfeited upon felony conviction such as the right to hold public office and some property and voting rights. *Id.* at 88-92.

[37] *See* note 31 *supra*.

[38] FEDERAL OFFENDERS 1973, *supra* note 23, at Table H 10.

[39] Blumstein & Nagin, *supra* note 2, at 250 n.51.

[40] *Id.* at 252-53.

study of the deterrent effects of a criminal sanction, however, does not require that the group deterred be representative of the population as a whole.[41] The question Blumstein and Nagin addressed was whether the threat of criminal sanctions for noncompliance influenced those receiving orders from their draft board. The behavior of those who obtained deferments is irrelevant.[42]

More important, the years Blumstein and Nagin focused on—1970 and 1971—were poor ones for testing the deterrence question.[43] The lottery system came into operation at the end of 1969.[44] In its first year the lottery may have changed the operation of the draft mechanism enough to distort the relationship between the violation rate and the criminal sanctions levied. The subsequent periods studied—fiscal year 1971 and calendar year 1971—were no better, since by that time the American combat role was rapidly drawing to a close, and troop withdrawal was well underway.[45]

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[41] The generalizations that can be drawn from a study of the deterrent effects of draft violation may be limited by the special qualities of the group that is being deterred. As Blumstein and Nagin concede, however, draft violators from any period of the Vietnam War are different from "ordinary" criminals. *See id.* at 259. For a discussion of the deterrent effects of the criminal sanction on different groups of people, see Chambliss, *supra* note 3.

[42] If we were to follow Blumstein and Nagin's argument to its logical conclusion, we would never be able to look at deterrence in draft cases because women were exempt from the draft and thus we could not judge the deterrent effect of criminal sanctions on women.

[43] The use of data from two consecutive years presents a methodological problem Blumstein and Nagin did not resolve adequately. The statistical techniques they used, ordinary least squares, requires that the individual observations used be independent of one another. *See* J. JOHNSTON, ECONOMETRIC METHODS 11-13 (2d ed. 1972). Ordinary least squares technique includes an error term for each observation. If sample observations are not truly independent, as they are not when two observations are taken from each state, the resulting error terms associated with each observation will not be independent, distorting the results. *See id.* at 12. As a consequence, the sampling variances of the model's parameters—the regression coefficients corresponding to the effects of the independent variables—are underestimated. This, in turn, leads to the overestimation of the statistical significance of effects in the model. *Id.* at 246-47.

Blumstein and Nagin employed a dummy variable for time to compensate for the problem of non-independence. *See* note 29 *supra*. They set the dummy equal to zero for their 1970 observations and at one for their 1971 observations. *See* Blumstein & Nagin, *supra* note 2, at 258 n.89. The dummy variable was included in the model to explain variations in the effects of events unique to one year and common to all states. *Id.* at 258, 260 n.119. This is an adequate approach to the problem if the only source of lack of statistical independence is the result of consistent serial correlation; this is most likely not the case for the data used here. For a discussion of what the time dummy variable actually means, see note 29 *supra*.

[44] Former President Nixon established the lottery system in November 1969. Exec. Order No. 11,497, 32 C.F.R. § 1631.4-.5 (1971). The first drawing was held on December 1, 1969. Exec. Proclamation 3945, 34 Fed. Reg. 19,017 (1969).

[45] The table below shows American troop levels in Vietnam at the end of each calendar year from 1966 to 1972:

Draft calls in fiscal 1971 were less than half of what they had been just 3 years before,[46] and few men drafted during that period would see service in Southeast Asia. The application of criminal sanctions also underwent substantial change; almost two-thirds of the persons convicted of draft violations received terms of probation, and in some judicial districts virtually no draft violators were imprisoned.[47] Be-

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YEAR	NUMBER	PERCENTAGE CHANGE FROM PRIOR YEAR
1966	385,300	
1967	485,600	+ 26%
1968	536,100	+ 10%
1969	475,200	− 11%
1970	334,600	− 30%
1971	156,800	− 53%
1972	24,200	− 85%

U.S. DEPARTMENT OF COMMERCE—BUREAU OF THE CENSUS, STATISTICAL ABSTRACT OF THE UNITED STATES 1976, at 338, Table No. 538 (1976).

[46] The table below shows inductions between fiscal years 1966 and 1972:

FISCAL YEAR	NUMBER	PERCENTAGE CHANGE FROM PRIOR YEAR
1966	340,000	
1967	299,000	− 12%
1968	340,000	+ 14%
1969	265,000	− 22%
1970	207,000	− 22%
1971	156,000	− 25%
1972	27,000	− 83%

Id. at 339, Table 541.

[47] The table below summarizes the percentage of guilty pleas and convictions that received probation sentences between fiscal years 1966 and 1972:

FISCAL YEAR	PERCENTAGE
1966	17.3%
1967	10.4%
1968	25.0%
1969	38.9%
1970	55.7%
1971	62.7%
1972	71.7%

FEDERAL OFFENDERS 1973, *supra* note 23, at H 10, Table H 10.

In fiscal 1970, of the 89 federal district courts and the D.C. district court, 6 (6.7%) had no convictions for selective service violations and 5 (5.6%) had convictions but no sentences of imprisonment. *See* FEDERAL OFFENDERS 1970, *supra* note 23, at 138–39, Table D 14 (1972).

cause of these drastic internal changes in the Selective Service System, using data from this period, as Blumstein and Nagin did, creates unnecessary difficulties for the analysis. A much better test of the deterrence hypothesis could have been made if Blumstein and Nagin had used data from 1968 and 1969, the peak period of the Vietnam War, when the number of inductions was stable and the Selective Service was not undergoing significant change.

D. *Inadequate Control Variables*

Blumstein and Nagin tried to account for the influence of the community on draft violation and punishment of draft violators by using traditional control variables. Although such factors as wealth, education and race ordinarily correlate with incidence of crime, such factors did not appear to have a significant correlation with draft violation.[48] Because draft violation was a political offense, the political environment of each community could have been more important than the traditional social and economic influences.[49] Political environment may have affected the exercise of discretion by local draft boards and prosecutors[50] and may have influenced dispositions

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In fiscal year 1971, 12 (13.3%) district courts had no convictions and 17 (18.9%) had convictions but no sentences of imprisonment. *See* FEDERAL OFFENDERS 1971, *supra* note 23, at 128-29, Table D 14 (1973). All district courts in both years had selective service violation cases.

[48] Blumstein and Nagin did not find any consistent significant correlation between their control variables for social and economic conditions and the violation rate. *See* Blumstein & Nagin, *supra* note 2, at 270 app. I had included similar control variables in early stages of my own analysis, but dropped them because I also found no significant correlations.

[49] *See* notes 83-89 *infra* and accompanying text.

[50] A great deal of discretion separated an offender's decision to violate the draft laws and the official decision to prosecute. Under the Selective Service Act, any registrant who failed to fulfill a "duty" was classified as delinquent. Selective Service System, 32 C.F.R. § 1602.4 (1971). Prior to Gutknecht v. United States, 396 U.S. 295 (1970), delinquents were ordered for immediate induction; if the induction order was not obeyed, or if the original reason for the delinquency was a failure to obey an order for induction (or an order to perform alternative service), the local draft board was required to report the delinquent to the United States Attorney for investigation and prosecution. Selective Service System, 32 C.F.R. § 1642.41(a) (1971). A local draft board, however, could delay a report for up to 30 days in an effort to locate a registrant and obtain compliance. *Id.* In practice, local boards often delayed reports for longer than 30 days.

The degree of discretion exercised throughout the Selective Service process became even greater in fiscal years 1970 and 1971, the period of the Blumstein and Nagin study. In those years legal personnel of the Selective Service regional offices undertook a substantive review of the merits of delinquency cases prior to forwarding them to the United States Attorney. SEMI-ANNUAL REPORT OF THE DIRECTOR OF SELECTIVE SERVICE, JULY 1 TO DECEMBER 31, 1972, at 48 (1973).

by judges and juries.[51] In addition, community sentiment may have influenced an individual's decision not to cooperate with the draft in the first place.[52]

In an attempt to account for community attitudes, Blumstein and Nagin included dummy variables for region and for estimates of local public opinion.[53] Local public opinion, as measured by Blumstein and Nagin, appeared to have no significant impact on violation rate. But the region dummy variables were statistically significant, and their significance demonstrates the need to incorporate measures of local culture.[54] The crudeness of the dummy variable approach suggests that specification error still may have been present.[55] A more refined measure of political culture might have improved the analysis.

Blumstein and Nagin's emphasis on such traditional control variables as race, education and income points to the major problem in their analysis: It did not adequately reflect the *political* nature of the draft. The alternative developed in Part II seeks to recognize the political aspects of draft violation by introducing different control variables, by improving the measurement of violation rate, by using different sanctioning variables, and by using data from a different time period.

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[51] *See* Cook, *Public Opinion and Federal Judicial Policy*, 21 Am. J. Pol. Sci. 567 (1977); Kritzer, *Federal Judges and their Political Environments: the Influence of Public Opinion*, 23 Am. J. Pol. Sci. — (1979); Kritzer, *Political Correlates*, *supra* note 15; Comment, *Judicial Activity and Public Attitude: A Quantitative Study of Selective Service Sentencing in the Vietnam War Period*, 23 Buffalo L. Rev. 465 (1974).

[52] Blumstein and Nagin acknowledge this potential influence. Blumstein & Nagin, *supra* note 2, at 259.

[53] *Id.* at 258-59.

[54] *Id.* at 268.

[55] For example, the authors did not discuss the possible relationship between the regional variables and the public opinion variable: The regional variables also could have reflected differences in public opinion. The variable used as an indicator of public opinion—the percentage of positive answers to a Gallup Poll question, "In view of the developments since we entered the fighting in Vietnam, do you think that the U.S. made a mistake sending troops to Vietnam?"—may not have reflected local attitudes regarding the morality of the war. An affirmative answer "could simply reflect disappointment that the war was not going well," as the authors recognized, *id.* at 259 n.94, although some data suggested "that the 'mistake' question may be a reasonably adequate substitute for the desired moral opinion question," *id.* Furthermore, the Gallup Poll data used to extrapolate statewide attitudes toward the war had, in the authors' words, "considerable limitations" because of the relatively small sample size of a given poll. *Id.* at 259 n.93. Given these limitations, then, it is possible that Blumstein and Nagin's chosen variables simply could not have accurately reflected local political attitudes. The analysis presented here seeks to overcome these problems by using two different measures of opinion (the "mistake" question and a "hawk-dove" indicator), and by obtaining values for the states by aggregating a series of polls rather than by simulation techniques based on a single poll. *See* notes 74-78 *infra* and accompanying text.

II. A Reexamination of the Deterrence Question

The alternative model presented here resembles the Blumstein-Nagin model, while incorporating a number of changes designed to overcome the weaknesses discussed above. In place of the various estimates used by Blumstein and Nagin, this analysis measures the number of draft violators as the number of men referred to the Justice Department by Selective Service. In the model analyzed below, the sanctioning threat has two main components: certainty of sanctions and severity of sanction, with certainty of sanctions divided into three sub-components—probability of prosecution, probability of conviction and probability of a prison sentence. The model introduces new or modified control variables for local political environment. In order to avoid confounding system changes, data for the analysis are drawn from an earlier period during which the nature of the Selective Service System's operations was stable. In order to improve the quality of the estimates of the effects of sanctions on violation rates, a variant of ordinary least squares, weighted least squares, is used for the statistical analysis.[56] Taken together, these alterations should result in better, more meaningful estimates of the deterrent effect of criminal sanctions.

A. *Estimating the Violation Rate*

The measure of draft violation rate used in the analysis below is the ratio of the number of violations to the number of men called for induction.[57] The figures for both values are for fiscal year 1968, and the unit of measurement is the state. Selective Service publications provided the figures for induction calls.[58] The number of violations was taken as the number of men that the Selective Service referred to the Justice Department for investigation; a congressional committee

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[56] Weighted least squares involves assigning a weight to each observation prior to estimation, and then proceeding as in ordinary least squares. *See* note 79 *infra*.

[57] A transformed version of this dependent variable, equivalent to Blumstein and Nagin's "logistic form," was also used in the analysis (in the tables below it will be identified as "logit"). The form of this transformation, where P is equal to the violation measure defined above is

$$L(P) = \ln\left(\frac{P}{1-P}\right).$$

For a discussion of the merits of this measure, see Blumstein & Nagin, *supra* note 2, at 261.

[58] Semi-Annual Report of the Director of the Selective Service, July 1 to December 31, 1968, at 39 (1969); Semi-Annual Report of the Director of the Selective Service, January 1 to June 30, 1968, at 37, Table 6 (1968).

publication provided this datum.[59] These latter figures may miscalculate the "true" violation level; underestimation is the lesser danger, though it might occur in the following way: In theory, if a draft board found a registrant to have violated the Selective Service Act, the board was required to refer the case to the local United States Attorney.[60] Violations usually occurred as a result of a registrant's failure to comply with an order to report for induction or alternative service.[61] In practice, however, individual local boards may not have referred every case, seeking instead to give the registrant another chance to submit to induction or to begin alternative service.[62] Despite this potential problem, the analysis below assumes that all offenders were referred to the Justice Department for investigation and possible prosecution, simply because there is no way of determining how many offenders were handled in the more informal fashion. A more serious potential problem is that the measure of violation rate used below may overestimate the number of violators because it treats as violators those individuals who had not intended to violate the draft law and who submitted to induction or reported for alternative service after referral to the Justice Department. The alternative, however, is to use the next smaller measure, the number of indictments;[63] and, as was argued above, this figure seriously underestimates the number of violators.[64]

In choosing between possible overestimation and possible underestimation, overestimation actually presents fewer problems, since a control variable may be introduced to account for a large portion of the overestimation. This control variable is a measure of geographical mobility: the proportion of persons who moved into their current house in 1969 and 1970, as reported in the 1970 census.[65] Presumably, many cases were referred to the Justice Department because the Selective Service lost track of persons who moved and failed to report the new address. The Justice Department did not prosecute, but simply had the FBI locate such persons. The control variable for geographic mobility screens out some of the "noise" in the indicator of violation rate.

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[59] THE SELECTIVE SERVICE SYSTEM: ITS OPERATIONS, PRACTICES AND PROCEDURES 373 (1969) [hereinafter cited as THE SELECTIVE SERVICE SYSTEM].

[60] Selective Service System, 32 C.F.R. § 1602.4 (1971); *see* note 50 *supra*.

[61] Violations could have resulted from other things as well, such as failure or refusal to register with Selective Service, or for destroying draft registration or classification cards.

[62] *See* note 50 *supra*.

[63] If the data were available, another possible measure would be the proportion of men actually issued induction orders who failed to report when called. Such data would have to be obtained from Selective Service, and, amazingly Selective Service did not systematically start collecting such data until June 1970. Efforts to obtain the data for the period June 1, 1970 through December 31, 1972 were partially successful. Selective Service provided aggregate figures, by state, for the entire period, claiming that the data collection sheets that would have permitted breakdowns for shorter periods of time were no longer available. Because of the major political changes that occurred between June 1970 and December 1972 any analysis of that data would be highly questionable.

[64] *See* notes 20-28 *supra* and accompanying text. In 1968, indictments followed only 8.2% of referrals. Of 21,331 complaints, 1,754 resulted in prosecutions or dismissals. THE SELECTIVE SERVICE SYSTEM, *supra* note 59, at 373. Limitations on the available data, rather than theoretical considerations, constrain the alternative measures that exist. *See* note 63 *supra*. The true number of violators probably lies between the number of referrals, corrected for mobility, and the number of indictments.

B. *Measuring the Sanction Imposed*

The specific question analyzed below is the extent to which variation in the severity and certainty of sanctions imposed on draft offenders accounts for variation in the number of draft violations. Under the Selective Service Act, all violations were punishable by up to 5 years imprisonment and/or a $10,000 fine.[66] If multiple counts were involved, a convicted violator could have, in theory, been sentenced to a term longer than 5 years if the sentences ran consecutively, but this seldom occurred.[67] In this model the independent variable measuring severity is defined as the average "JAILTERM" in months, of those sentenced to imprisonment, as reported by the Administrative Office of the United States Courts.[68]

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[65] This control variable attempts to control for some of those who were not "true" draft violators. "True" violators were those individuals who weighed the alternatives and decided that the risks of possible sanctions were preferable to induction. *See* Blumstein & Nagin, *supra* note 2, at 255.

Overestimation of the number of draft violations still exists to the extent that individuals submitted to induction after referral, causing their cases to be dismissed. The number of draft violators who went to trial having incontrovertible evidence of erroneous classification could be very small. *Id.* at 254. The existence of marginal defenses could classify an individual as a true violator because the probability of conviction would approach that of a violator having no defense.

Neither Blumstein and Nagin's model nor the one presented here corrects for individuals who made a decision not to violate the draft, but rather to avoid induction as long as possible. Unlike ordinary criminals, those disobeying induction orders could avoid criminal sanctions merely by submitting to induction before time of trial. *Id.* at 240.

[66] 50 U.S.C.A. app. § 462(*a*) (1970).

[67] FEDERAL OFFENDERS 1968, *supra* note 23, at 156. In 1968, the average sentence of imprisonment for a violation of the Selective Service Act was 37.3 months. Of the 580 sentences imposed, 44 were for a year or less, 131 were between 1 and 3 years, 301 were between 3 and 5 years, and 104 were for 5 years or more.

[68] *Id.* Blumstein and Nagin consider the "expected" (average) sentence of all of those going to trial rather than the average term of imprisonment of those sentenced to prison, or the intermediate variable, the average sentence of all of those convicted. Blumstein & Nagin, *supra* note 2, at 257-58. Notice that I have ignored the effect of fines in this analysis. Fines were so rare in draft cases that potential offenders probably paid little heed to them. In fiscal

Defining a variable to measure the certainty of sanctions is somewhat more complex. Certainty of sanctions can be defined as the proportion of draft offenders who ultimately served time in prison. This proportion depends upon action taken at the various decision points in the path from violation to jail:

(1) Identifying an individual as a draft offender;

(2) Referring the offender to the Justice Department;

(3) Prosecuting the offender, rather than simply locating him and telling him to report for induction;

(4) Convicting the offender, as opposed to either dismissing the case after it is filed because the offender agreed to be inducted or acquitting the offender in a trial;

(5) Imposing a sentence involving a prison term.

In reality, with the available data, it is not possible to follow individual cases in this way. The various stages must be estimated from aggregate state data. As discussed in the preceding section,[69] identification and referral merge into a base which may be referred to as the "number of offenders."[70] Certainty of sanctions is equal to the ratio of the number of men imprisoned to the number of offenders—or in other words, the simple probability of imprisonment [$P(I)$] for an individual referred to the Justice Department as an offender.

Once draft violators are so defined, probability of imprisonment can be broken into a number of simple and conditional component probabilities:

(1) Probability of prosecution, $P(P)$;

(2) Probability of conviction, given a decision to prosecute, $P(C|P)$;

(3) Probability of receiving a jail sentence, $P(J|P\&C)$.

Certainty of sanctions is simply equal to the product of its three components:

$$P(I) \equiv P(P) \cdot P(C|P) \cdot P(J|P\&C).$$

$P(I)$, estimated by the product of its components, is included in one of the analyses presented below; the three individual components, $P(P)$, $P(C|P)$ and $P(J|P\&C)$, are included in the other.[71]

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year 1968 fines were imposed in only two cases. FEDERAL OFFENDERS 1968, *supra* note 23, at 156.

[69] *See* notes 57–65 *supra* and accompanying text.

[70] In the model presented here, as well as in Blumstein and Nagin's, the number of offenders is only approximated. *See* notes 57–65 *supra* and accompanying text.

[71] These data were computed from information in THE SELECTIVE SERVICE SYSTEM, *supra* note 59, and FEDERAL OFFENDERS 1968, *supra* note 23.

C. *The Time Period*

The analysis uses data from 1968 and 1969 because the Vietnam War was at its height, and because the draft underwent no major changes during this period. Since the deterrent effects of law enforcement arise from sanctions already imposed, the data must be lagged; therefore, data from fiscal year 1968 measure sanctions, and data from fiscal year 1969 measure violation rate. The 1-year lag in this analysis contrasts with the 6-month overlapping lag in the Blumstein and Nagin analysis.[72]

D. *Control Variables for Political Climate*

In order to guard against spurious relationships between the sanction variables and violation rate, the model includes three additional control variables. These variables are indicators of the local political environment which might have influenced the actions both of potential draft offenders and of judges in sentencing violators. The first measures the tolerance and openness of each state to new ideas, and the other two measure public attitudes toward the Vietnam War in each state.

1. *The innovation variable.*

The model uses a variable developed elsewhere to obtain state-by-state estimates of the level of tolerance of deviation and openness to new ideas. Originally developed as a tool for looking at the diffusion of innovative programs and services among state governments, this variable is based upon an analysis of 88 different programs enacted by at least 20 state legislatures prior to 1965.[73] A state was

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[72] *See* Blumstein & Nagin, *supra* note 2, at 250 n.51.

[73] Walker, *The Diffusion of Innovations Among the American States*, 63 AM. POL. SCI. REV. 880 (1969). Walker defines innovation as the adoption of a new program or policy by a state, *id.* at 881, and ranks states on the basis with which they adopt innovations. States were assigned a score ($S_{j\ell}$) for each of the programs studied. A state's score on a single program was defined as:

$$S_{j\ell} = \frac{(t_{j\ell} - t_{1\ell})}{(t_{1\ell} - t_{2\ell})}$$

where $S_{j\ell}$ is the score of a given state, j, on a single program, ℓ; $t_{j\ell}$ is the time of the state's adoption of the program; $t_{1\ell}$ is the time of the first state's adoption of the program; and $t_{2\ell}$ is the time of the last state's adoption of the program.

The overall innovation score for each state was the average score on the 88 programs subtracted from one. Thus, the higher the score, the more innovative the state. The actual scores ranged from .656 (New York) to .298 (Mississippi). *Id.* at 882-83.

assigned a score for each of the 88 programs based on the amount of time that state took to adopt the program compared to the time taken by the last state adopting the program. The "innovation" score is useful as a control variable because it appears to be a good indicator of the general political culture of individual states.

2. *The public opinion variables.*

The other two measures of local political environment use public opinion data originally collected by the American Institute of Public Opinion (the Gallup Poll).[74] Although national surveys used singly will not give a direct measure of public opinion in individual states,[75] a group of consecutive or nearly consecutive national surveys containing the same question or questions with a reasonably constant overall response pattern can provide fairly reliable measures of opinion within the individual states.[76]

One control variable is based on a series of six surveys between December 1967 and April 1968. Individuals were asked if they regarded themselves as "hawks" or "doves" and if they approved of President Johnson's handling of the Vietnam War. The first public opinion variable is a combination of these two questions created by dividing the respondents into four groups: (1) doves disapproving Johnson's handling of the war; (2) doves approving Johnson's handling of the war; (3) hawks approving Johnson's handling of the war; and (4) hawks disapproving Johnson's handling of the war.[77]

In an analysis of the relationship between the innovation index and a variety of state social, economic and political variables, innovation correlated highly with wealth, income, region, malapportionment and party competition. Thus, the innovation variable reflects mainly those social and economic factors which influence the political climate of a state, a crucial variable in studying draft violation. Social and economic factors that exert little or no influence on a state's political culture are thereby dropped from the variable.

[74] The Roper Public Opinion Research Center, Williams College, provided the data for the public opinion measures.

[75] In order to use individual national surveys, Blumstein & Nagin, *supra* note 2, at 239 n.93, used a simulation technique. Weber, Hopkins, Mezey & Munger, *Computer Simulation of State Electorates*, 36 PUB. OPINION Q. 549 (1972-73). This technique has recently come under attack. *See* Kuklinski, *Constituency Opinion: A Test of the Surrogate Model*, 41 PUB. OPINION Q. 34 (1977); Seidman, *Simulation of Public Opinion: A Caveat*, 39 PUB. OPINION Q. 331 (1975).

[76] For a discussion of this technique of creating public opinion measures for individual states, see R. WEBER, PUBLIC POLICY PREFERENCES IN THE STATES 59-64 (1971). The procedure aggregates the data across the series of surveys and breaks out the individual state "samples."

[77] As it turned out, one of the six surveys was not available from the Roper Center (No. 759); however, this was not so big a problem as anticipated. There apparently was a break in public opinion between surveys 758 and 759, probably as a result of the New Hamp-

The second indicator of public opinion is the percentage of respondents who felt that it was a "mistake" for the United States to send troops to Vietnam. The question was asked in five nonconsecutive surveys between October 1967 and April 1968.[78]

E. *Procedures of Analysis*

The data were first analyzed by ordinary least squares regression using standardized coefficients (betas) to interpret the results.[79] Only the severity and certainty variables were included as predictors of violation level in the first analyses. Separate runs were done using overall certainty, P(I), and using the three components of certainty, P(P), P(C|P) and P(J|P&C).[80] In subsequent runs, the four control

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shire presidential primary, in which peace candidate Eugene McCarthy made a very strong showing. Consequently, data from the last two surveys were not used in constructing the measures of state public opinion.

[78] The surveys were numbers 752, 755, 757, 758, and 760. The response pattern for this period was quite consistent, with 45–49% agreeing and 40–46% disagreeing.

[79] Ordinary least squares regression is a statistical tool used to estimate a linear relationship between a dependent variable and one or more independent variables. For a discussion of multivariate regression analysis in correlational deterrence studies, see Cook, *Punishment and Crime: A Critique of Current Findings Concerning the Preventive Effects of Punishment*, 41 LAW & CONTEMP. PROB. 164, 184–86 (1977). Ordinary least squares estimates a set of weights for the independent variables that minimize the sum of the squares of the differences between the observed dependent variable and the predicted dependent variable. A measure of the degree of the overall relationship, R^2, is the ratio of the variation of the dependent variable explained by the independent variables to the total variation of the dependent variable.

If the actual (population) coefficient of an independent variable is zero, the variable does not explain any of the variation in the dependent variable. In order to determine if the population coefficient is actually zero, analysts use either "t" tests or "F" tests; the latter is used here and is simply the square of the former. *See* R. HENKEL, TESTS OF SIGNIFICANCE 43 (1976). The F test for a given independent variable indicates whether any variation in the dependent variable is explained by the independent variable, after removing the variation accounted for by the other independent variables in the equation.

The coefficients estimated by ordinary least squares regression reflect the units of measurement of the variables. To compare more adequately the relative importance of each independent variable, standardized coefficients, or "betas," are computed. Beta coefficients reflect units of standard deviations. Thus, if variable *x* has a beta coefficient of two, a one standard deviation change in *x* causes a two standard deviation change in the dependent variable. Table 1 shows the standard deviations (and means) of the variables; they can be used to convert the standardized coefficients to unstandardized coefficients. The formula for this conversion is:

$$B_{yx} = \beta_{yx}(S_y/S_x)$$

N. NIE, C. HALL, J. JENKINS, K. STEINBRENNER & D. BENT, SPSS: STATISTICAL PACKAGE FOR THE SOCIAL SCIENCES 325 (1975).

[80] As indicated earlier, the unit of analysis is the state. States were the smallest geographic unit for which draft call data were available. Because of the nature of the data, states were selected as a unit of analysis, as in the Blumstein and Nagin study. *See* Blumstein & Nagin, *supra* note 2, at 253–54. Six states were omitted because of unavailable data. The

variables were introduced, once with overall certainty and once with the components of certainty. The dependent variable was then transformed to the logit form,[81] and the above analyses were redone. Finally, each state was weighted proportionately to its population,[82] and the entire set of analyses was repeated.

III. ANALYSIS

The results of this analysis, including intercorrelations among variables, means and standard deviations, regressions without control variables, and regressions with control variables, are shown in Tables 1-5.

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preferred sampling unit would have been federal districts because draft violation prosecutions took place in the federal district in which they occurred. This unit of analysis would have provided a more accurate basis for assessing the impact of political culture on violation rate. Because the potential sanctions confronting a violator were estimated from statewide averages rather than federal district averages, there may be aggregation biases in the estimated sanction coefficients. The magnitude of any such biases, however, is probably not significant. *Id.*

[81] For a discussion of the transformed variable and its derivation, see note 57 *supra* and accompanying text.

[82] The purpose of weighting the data is twofold. First, weighting the states by population gives a more accurate reflection of the overall, national results for draft violation. Second, the weighting process improves the technical characteristics of the estimates. Ordinary least squares requires the assumption of equal variances among the error terms (homoscedasticity). *See* JOHNSTON, *supra* note 43, at 11-13. When the dependent variable is a proportion, this assumption is violated, resulting in heteroscedasticity. This problem can be solved by weighting the observations by the inverse of the variance of the error terms. When the dependent variable is a proportion, P, a good estimate of the variance of the error terms, σ^2_P, is the variance of the estimate of P:

$$\sigma^2_P = \frac{P\,(1 - P)}{N}$$

where *N* is the number of observations. For the logistic form the estimate is:

$$\sigma^2_{L(P)} = \frac{1}{NP\,(P-1)}$$

The weight based on population is similar to that based on the variance of the estimate because N (the number of men called for induction) is highly correlated with the size of the population of the state involved. Thus, either weighting technique overcomes the problem of heteroscedasticity. Both types of weights were used, and with one exception, the results were virtually identical; in the discussion above, the analysis based on population weights is reported.

TABLE 1

CORRELATIONS AMONG VARIABLES USED IN THE DETERRENCE ANALYSIS[a]

Variable	X_1	X_2	X_3	X_4	X_5	X_6	X_7	X_8	X_9	X_{10}	Mean	Standard Deviation
X_1 Violation Rule	—										.0743 *.1075*	.0660 *.1005*
X_2 JAILTERM	−.14 *−.19*[b]	—									40.21 *40.42*	14.36 *11.35*
X_3 Certainty—P(I)	−.34 *−.30*	−.23 *−.11*	—								.0538 *.0558*	.0498 *.0397*
X_4 P(P)	−.34 *−.33*	−.17 *−.09*	.48 *.71*	—							.1415 *.1154*	.0969 *.0733*
X_5 P(C|P)	.05 *.14*	−.14 *−.01*	.33 *.21*	−.29 *−.25*	—						.6327 *.6574*	.2064 *.1464*
X_6 P(J|P&C)	−.12 *−.24*	−.07 *−.01*	.37 *.34*	−.27 *−.15*	.02 *.11*	—					.7885 *.7734*	.2029 *.1962*
X_7 Innovation	.36 *.60*	−.20 *−.25*	−.13 *−.22*	.05 *−.15*	−.20 *−.11*	−.29 *−.38*	—				.4506 *.5030*	.0861 *.0888*
X_8 Mistake[c]	−.03 *−.04*	.16 *.18*	−.12 *−.15*	−.11 *−.13*	.05 *−.14*	−.01 *−.15*	−.09 *.09*	—			.5095 *.5064*	.0922 *.0691*
X_9 Support[c]	.04 *−.08*	.19 *.14*	−.05 *.01*	−.22 *−.18*	.05 *.20*	.26 *.29*	−.31 *−.37*	−.39 *−.38*	—		.6805 *.6714*	.1117 *.0770*
X_{10} Mobility	.29 *.08*	−.08 *.17*	.02 *.02*	−.13 *−.05*	.25 *.30*	.02 *.21*	−.48 *−.46*	−.19 *−.38*	.37 *.30*	—	2.457 *2.348*	.4461 *.4706*
X_{11} Logit	.94 *.96*	−.18 *−.13*	−.37 *−.37*	−.36 *−.39*	.05 *.16*	−.10 *−.23*	.30 *.35*	−.10 *−.12*	.11 *−.03*	.38 *.17*	−2.786 *−2.409*	.7642 *.9731*

[a] N is 44.
[b] Italicized figures are from results of weighted regression analysis.
[c] The scores for this variable have been subjected to a standardization process.

TABLE 2

VIOLATION LEVEL PREDICTED FROM CERTAINTY AND SEVERITY OF SANCTIONS USING THE LINEAR MODEL

Variable	Beta	F	R^2	Beta	F	R^2
JAILTERM	−.23 *−.23*[a]	2.383 *3.400*		−.26 *−.24*	3.029 *4.081*	
Certainty—P(I)	−.39 *−.53*	6.800 *16.277*		—	—	
P(P)				−.50 *−.60*	9.355 *22.611*	
P(C|P)				−.13 *.02*	0.670 *0.033*	
P(J|P&C)				−.27 *−.34*	3.101 *7.604*	
Equation		3.862 *9.164*	.17 *.31*		2.784 *7.760*	.23 *.45*

[a] Italicized figures are from results of weighted regression analysis.

TABLE 3

VIOLATION RATE PREDICTED FROM CERTAINTY AND SEVERITY OF SANCTIONS USING THE LOGISTIC MODEL

Variable	Beta	F	R²	Beta	F	R²
JAILTERM	−.28 *−.21*[a]	3.622 *2.846*		−.30 *−.21*	4.205 *3.209*	
Certainty—P(I)	−.44 *−.60*	9.046 *22.357*		—	—	
P(P)	—	—		−.52 *−.65*	10.793 *26.722*	
P(C|P)	—	—		−.14 *.03*	0.857 *0.061*	
P(J|P&C)	—	—		−.26 *−.33*	3.083 *8.064*	
Equation		5.286 *11.867*	.21 *.37*		3.254 *9.210*	.26 *.49*

[a]Italicized figures are from results of weighted regression analysis.

TABLE 4

VIOLATION RATE PREDICTED FROM CERTAINTY AND SEVERITY CONTROLLING FOR OTHER VARIABLES USING THE LINEAR MODEL

Variable	Beta	F	R²	Beta	F	R²
JAILTERM	−.08 *−.13*[a]	0.362 *1.729*		−.09 *−.13*	0.416 *1.952*	
Certainty—P(I)	−.26 *−.37*	4.146 *13.702*		—	—	
P(P)				−.34 *−.46*	5.701 *21.105*	
P(C|P)				−.08 *.00*	0.390 *0.001*	
P(J|P&C)				−.09 *−.15*	0.423 *2.178*	
Innovation	.63 *.71*	16.946 *36.821*		.61 *.64*	14.909 *29.740*	
Mistake	.14 *.03*	1.037 *0.091*		.12 *−.01*	0.727 *0.005*	
Support	.07 *−.02*	0.253 *0.032*		.04 *−.07*	0.058 *0.370*	
Mobility	.59 *.48*	15.915 *15.027*		.57 *.45*	13.555 *14.627*	
Equation		5.697 *12.775*	.49 *.68*		4.435 *11.721*	.52 *.73*

[a]Italicized figures are from results of weighted regression analysis.

TABLE 5

VIOLATION RATE PREDICTED FROM CERTAINTY AND SEVERITY CONTROLLING FOR OTHER VARIABLES USING THE LOGISTIC MODEL

Variable	Beta	F	R^2	Beta	F	R^2
JAILTERM	−.13 *.10*[*]	1.156 *1.190*		−.14 *−.10*	1.153 *1.298*	
Certainty—P(I)	−.32 *−.46*	7.255 *24.739*		—	—	
P(P)	—	—		−.37 *−.55*	7.575 *35.427*	
P(C|P)	—	—		−.12 *−.02*	0.896 *0.063*	
P(J|P&C)	—	—		−.11 *−.18*	0.657 *3.635*	
Innovation	.57 *.65*	16.081 *35.629*		.56 *.57*	15.860 *28.536*	
Mistake	.09 *−.06*	0.444 *0.362*		.08 *−.11*	0.304 *1.191*	
Support	.10 *−.04*	0.491 *0.152*		.06 *−.09*	0.187 *0.785*	
Mobility	.63 *.49*	20.574 *18.561*		.61 *.47*	17.450 *18.952*	
Equation		7.309 *15.649*	.56 *.72*		5.340 *14.754*	.56 *.78*

[*] Italicized figures are from results of weighted regression analysis.

In the absence of control variables, both certainty, P(I), and severity of prison sentence, JAILTERM, appear to have affected violation rates for draft offenses. As Table 2 shows, the only nonsignificant[83] coefficients are for the probability of conviction in both analyses and for JAILTERM in the unweighted analysis. The results in all the tables are presented in terms of standardized (beta) coefficients[84] in order to aid comparison of the influences of specific variables and to permit comparison of the results of the linear and logistic forms of the dependent variable.[85] The results for the linear and logistic forms are virtually identical.[86]

On the whole, certainty of sanctions is a much more important predictor of violation level than severity of sanctions, with a beta of -.53 as compared to a beta for severity of -.25 (linear-weighted model). Breaking certainty into its components reveals that the most important component is probability of prosecution. Both probability of prosecution and probability of a prison sentence are more important than the actual length of the JAILTERM, with betas of -.60 and -.34, respectively, versus -.24 (linear-weighted model). Still, without controlling for other variables, both certainty and severity appear to have had a deterrent effect on potential draft violators.

The effect of the four control variables (including mobility) on these relationships is shown in Tables 4 and 5. Severity of sanctions ceases to have any significant impact on violation rate,[87] and the significant relationship between probability of a jail sentence and the dependent variable disappears for the linear form. The only three consistently significant predictors of violation rate are probability of prosecution, innovation and mobility.[88] Thus, when one controls for the local political environment, the apparent relationships between violation rate and both probability of a prison sentence if convicted and severity of sentence disappear. The relationships found above were largely attributable to the local political culture within which judges and the potential draft violators were acting. There remains, however, strong statistical evidence that marginal increases in prosecution rates were related to marginal decreases in violation rates.[89]

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[83] The critical value of F at the .05 level for a 1-tailed test is approximately 2.85; anything with an F less than this value is not statistically significant (*i.e.*, we are unable to conclude that the "population" coefficient is different from zero). *See* R. HENKEL, *supra* note 79.

[84] *See* note 79 *supra*.

[85] One of the problems with using standardized coefficients is that it obscures how actual changes in independent variables might change the dependent variable. For example, what effect would increasing the average JAILTERM by one month have on the violation rate? The unstandardized regression coefficient for JAILTERM (linear form of the dependent variable) is -.002; this means that for every one month increase in the average jail sentence, the violation rate dropped by .2% (the average violation rate was about 10%). Applied to the state of California, this means that if the average jail sentence for violators in California fiscal year 1968 had been 54 months rather than 42 months, there would have been 6,693 draft violators in fiscal year 1969 rather than 7,287. Assuming a completely linear relationship, the average prison sentence would have had to have been about 17 years in order to reduce the violation rate in California to zero. Readers interested in converting other coefficients to their unstandardized values should see note 79 *supra*.

[86] Population weights were used in the runs reported in the tables. *See* note 82 *supra*. Results with variance-based weights were similar. In general, the R^2 scores for the linear model were less with variance-based weights than with population-based weights; in the logistic model, the reverse occurred.

[87] The one exception is when variance-based weights are used in the logistic form. In that computation, JAILTERM is significant at the .05 level (1-tailed test).

IV. Conclusion

The results of the deterrence analysis presented above are consistent with the thrust of numerous other studies of the deterrence question. Marginal differences in certainty of sanctions are significantly related to marginal variations in the draft violation rate, but marginal differences in sentence severity are not. Differences in the form of the dependent variable do not affect these findings.

Blumstein and Nagin found that probability of conviction was significantly related to the violation rate. The analysis presented above finds that the probability of prosecution is significantly related to the violation rate, while probability of conviction is not. Because probability of conviction and probability of prosecution are a part of the larger notion of certainty of sanctions, and because neither this analysis nor Blumstein and Nagin's analysis found severity of sanctions to have a significant effect upon violation rate, the two analyses are, in fact, generally consistent in terms of the thrust of their empirical findings. Because the two analyses used different time periods and different measures, their consistency increases the confidence with which the results can be viewed.

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[88] Probability of prosecution, innovation and mobility account for 72% of the variation in the violation rate; the eight variables in the model together account for only 75% of the variation.

[89] One possible objection to this analysis and interpretation is that it misapplies and misinterprets the theory of general deterrence. According to that theory, sanctions can have an impact only if they are applied with a minimal level of certainty, and once this level is reached, increases in severity can further affect the violation rate. *See* Erickson & Gibbs, *The Deviance Question: Some Alternative Methods of Analysis*, 54 Soc. Sci. Q. 534, 542 (1974). In statistical terms, this theory suggests the existence of a multiplicative interaction between severity and certainty of sanctions. To meet this criticism, an interaction term was added to the model; the resulting R^2 was virtually the same as before, indicating that the interaction does not exist.

Since this analysis found probability of conviction not to have a significant relationship with violation rate, Blumstein and Nagin's interpretation of their findings—that the prime deterrent of draft offenses was the fear of "stigma" attached to a conviction—is more problematic. Most violators could easily avoid the stigma of a conviction by simply submitting to induction after charges were filed (and thus having the case dismissed).

Although potential violators inevitably must have pondered the undesirable consequences that would follow a felony conviction, neither this model nor Blumstein and Nagin's pinpoints which consequences predominate. Whether or not the consequences that predominate merit the label "stigmatic" is unclear. Much depends upon the breadth of one's definition of stigma. Further, the concept of stigma, however defined, may be irrelevant to an essentially political crime like draft violation, because among some groups of draft-age men in the Vietnam era, non-cooperation with the draft may have evoked more admiration than scorn. In this sense, the problem of stigma is related to the larger issue suggested by the analysis above; a potential violator deciding whether or not to cooperate with Selective Service considered a variety of factors, including his own political attitudes, the threat of sanctions and potential support in his local political environment.

Empirical studies of general deterrence properly try to account for the effect of such variables as wealth and race on the deterrent powers of criminal sanctions. But these general factors should not be allowed to obscure variables that account for the subtleties of the political climate in which sanctions must work. Only by considering the larger context in which the criminal law operates can such studies begin to uncover the complex social and psychological dynamics of the deterrent process.

APPENDIX 4 -- STATUTORY PROVISIONS AND LEGISLATIVE PROPOSALS

1.

SELECTIVE SERVICE ACT OF 1967 50 App. § 462

§ 462. Offenses and penalties

(a) Any member of the Selective Service System or any other person charged as herein provided with the duty of carrying out any of the provisions of this title [sections 451, 453, 454, 455, 456 and 458–471 of this Appendix], or the rules or regulations made or directions given thereunder, who shall knowingly fail or neglect to perform such duty, and any person charged with such duty, or having and exercising any authority under said title [said sections], rules, regulations, or directions who shall knowingly make, or be a party to the making, of any false, improper, or incorrect registration, classification, physical or mental examination, deferment, induction, enrollment, or muster, and any person who shall knowingly make, or be a party to the making, of any false statement or certificate regarding or bearing upon a classification or in support of any request for a particular classification, for service under the provisions of this title [said sections], or rules, regulations, or directions made pursuant thereto, or who otherwise evades or refuses registration or service in the armed forces or any of the requirements of this title [said sections], or who knowingly counsels, aids, or abets another to refuse or evade registration or service in the armed forces or any of the requirements of this title [said sections], or of said rules, regulations, or directions, or who in any manner shall knowingly fail or neglect or refuse to perform any duty required of him under or in the execution of this title [said sections], or rules, regulations, or directions made pursuant to this title [said sections], or any person or persons who shall knowingly hinder or interfere or attempt to do so in any way, by force or violence or otherwise, with the administration of this title [said sections] or the rules or regulations made pursuant thereto, or who conspires to commit any one or more of such offenses, shall, upon conviction in any district court of the United States of competent jurisdiction, be punished by imprisonment for not more than five years or a fine of not more than $10,000, or by both such fine and imprisonment, or if subject to military or naval law may be tried by court martial, and, on conviction, shall suffer such punishment as a court martial may direct. No person shall be tried by court martial in any case arising under this title [said sections] unless such person has been actually inducted for the training and service prescribed under this title [said sections] or unless he is subject to trial by court martial under laws in force prior to the enactment of this title [June 24, 1948]. Precedence shall be given by courts to the trial of cases arising under this title, and such cases shall be advanced on the docket for immediate hearing, and an appeal from the decision or decree of any United States district court or United States court of appeals shall take precedence over all other cases pending before the court to which the case has been referred.

(b) Any person (1) who knowingly transfers or delivers to another, for the purpose of aiding or abetting the making of any false identification or representation, any registration certificate, alien's certificate of non-residence, or any other certificate issued pursuant to or prescribed by the provisions of this title [sections 451, 453, 454, 455, 456 and 458–471 of this Appendix], or rules or regulations promulgated hereunder; or (2) who, with intent that it be used for any purpose of false identification or representation, has in his possession any such certificate not duly issued to him; or (3) who forges, alters, knowingly destroys, knowingly mutilates, or in any manner changes any such certificate or any notation duly and validly inscribed thereon; (4) who, with intent that it be used for any purpose of false identification or representation, photographs, prints, or in any manner makes or executes any engraving, photograph, print, or impression in the likeness of any such certificate, or any colorable imitation thereof; or (5) who has in his possession any certificate purporting to be a certificate issued pursuant to this title [said sections], or rules and regulations promulgated hereunder, which he knows to be falsely made, reproduced, forged, counterfeited, or altered; or (6) who knowingly violates or evades any of the provisions of this title [said sections] or rules and regulations promulgated pursuant thereto relating to the issuance, transfer, or possession of such certificate, shall, upon conviction, be fined not to exceed $10,000 or be imprisoned for not more than five years, or both. Whenever on trial for a violation of this subsection the defendant is shown to have or to have had possession of any certificate not duly issued to him, such possession shall be deemed sufficient evidence to establish an intent to use such certificate for purposes of false identification or representation, unless the defendant explains such possession to the satisfaction of the jury.

(c) The Department of Justice shall proceed as expeditiously as possible with a prosecution under this section, or with an appeal, upon the request of the Director of Selective Service System or shall advise the House of Representatives and the Senate in writing the reasons for its failure to do so.

June 24, 1948, c. 625, Title I, § 12, 62 Stat. 622; Aug. 30, 1965, Pub.L. 89–152, 79 Stat. 586; June 30, 1967, Pub.L. 90–40, § 1(11), 81 Stat. 105.

2.

SECTION 1114, FROM S. 1722, 96TH CONG., 1ST SESS., AS REPORTED BY THE SENATE COMMITTEE ON THE JUDICIARY (S.REP.NO. 96-553)

"§ 1114. Evading Military or Alternative Civilian Service

"(a) OFFENSE.—A person is guilty of an offense if—

"(1) knowing that he is under a duty imposed by a federal statute governing military service, or by a regulation, rule, order, or presidential proclamation issued pursuant thereto—

"(A) to register for military service;

"(B) to report for and submit to examination to determine his availability for military or alternative civilian service;

"(C) to report for and submit to induction into military service; or

"(D) to report for and perform alternative civilian service;

he fails, neglects, or refuses to do so; or

"(2) with intent—

"(A) to avoid or delay the performance of the military or alternative civilian service obligation of himself or another person imposed by a federal statute governing military service, or by a regulation, rule, order, or presidential proclamation issued pursuant thereto; or

"(B) to obstruct the proper determination of the existence or nature of such an obligation;

he engages in conduct constituting an offense under section 1343(a)(1) (Making a False Statement).

"(b) PROOF.—To the extent that conduct described in section 1343 (a)(1) is an element of an offense described in this section, the provisions of section 1345 (b)(2) and (c)(2) that apply to section 1343 (Making a False Statement) apply also to this section.

"(c) GRADING.—An offense described in this section is—

"(1) a Class D felony if the offense is committed in time of war;

"(2) a Class E felony in any other case, except as provided in paragraph (3); and

"(3) a Class A misdemeanor under the circumstances set forth in subsection (a)(1)(A) if it occurs exclusively during a period in which only previously deferred registrants are subject to induction.

SECTION 1114. EVADING MILITARY OR ALTERNATIVE CIVILIAN SERVICE

1. In General and Present Federal Law

Section 1114 transfers certain felony violations of selective service law now contained in 50 U.S.C. App. 462(a) and (b) into the Criminal Code. The remaining offenses are reduced to misdemeanors.

50 U.S.C. App. 462 is an awkwardly drafted provision. In addition to defining specific offenses, often in obscure language, it generally makes it a crime, punishable by imprisonment for up to five years, to violate any provision of the statute, or regulation or administrative order issued thereunder.

The principal offenses under section 462 involve failure to register, or to report for or submit to induction; failure to report for a physical examination; and failure to keep one's local selective service board advised of a change of address, or to carry one's selective service card on his person. Offenses can be committed by persons subject to the law (e.g., failure to register), officials of the Selective Service System and other agencies (e.g., false examination reports), and "outsiders" (e.g., making false statements in behalf of registrant, or printing counterfeit selective service cards). The uniform felony classification has led to non-prosecution of many minor violations. Since the purpose of the statute is primarily to encourage men to serve in the armed forces (or alternative civilian work programs) rather than put them in jail, the policy of the Selective Service System and the Department of Justice with respect to registrants has been to punish principally persistent refusals to serve. The bulk of prosecutions have therefore been for disobeying orders of a selective service board to report for induction or civilian work. An exception has been the making of false statements, which is generally considered to warrant prosecution.

The statutory culpability standard is "knowing," but the courts have required something more than mere abstract knowledge of the order—i.e., an intent to evade the purpose of the law—where there was some question of the ability of the registrant to perform, e.g., where he was overseas and claimed it was impossible for him to report.[27] However, absent such circumstances casting doubt on the ability to perform, courts have held that mere knowledge of the order and a deliberate decision to disobey it are sufficient for liability; reliance on the advice of counsel that the order was unlawful does not negate the requisite culpability.[28]

2. The Offense

A. Elements

Subsection (a)(1) provides that a person is guilty of an offense if, knowing that he is under a duty pursuant to a Federal statute governing military service or a presidential proclamation, regulation, or administrative order promulgated thereunder, to register for military service, to report for and submit to examination to determine his availability for military or alternative civilian service, to report for and submit to induction into military service, or to report for and perform alternative civilian service, he fails, neglects, or refuses to do so.

The offenses of failing to report for and submit to induction, or to report for and perform alternative civilian service are "ultimate" offenses, involving a refusal to fulfill the final objectives of the selective service system to fairly select persons to serve in the armed forces or, if they are conscientious objectors, to perform alternative civilian work. These offenses are thus carried forward in this section for potential felony treatment. The offense of failing to register similarly is among the most serious derelictions, since it involves a kind of fraud on the system and, like the "ultimate" offenses, requires that another

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[27] *Silverman* v. *United States*, 220 F.2d 36 (8th Cir. 1955); compare *Donato* v. *United States*, 302 F.2d 468 (9th Cir. 1962), reconsidered 314 F.2d 67 (9th Cir.), cert. denied, 374 U.S. 838 (1963).

[28] See *United States* v. *Jacques*, 463 F.2d 653, 657 (1st Cir. 1972).

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individual be made to serve in the offender's place. It too is thus included in this section.

Contrary to the suggestion of the National Commission,[29] the Committee has also included failure to report for or submit to examination among the offenses brought forward for potential felony treatment. While not an "ultimate" offense, experience has shown that it has such a delaying effect on processing that the need for deterrence is great.[30]

Subsection (a) (2) provides that a person is guilty of an offense if, with intent (A) to avoid or delay the performance of the military or alternative civilian service obligation of himself or another person under the provisions of a Federal statute governing military service, or a presidential proclamation, regulation, or administrative order thereunder; or (B) to obstruct the proper determination of the existence or nature of such an obligation; "he engages in conduct constituting an offense under section 1343(a) (1) (Making a False Statement)."

This subsection is designed to carry forward that aspect of 50 U.S.C. App. 462(a) which punishes any person who shall "knowingly make, or be a party to the making of any false statement or certificate regarding or bearing upon a classification or in support of any request for a particular classification." The offense, as in current law, may be committed not only by one liable to service under the selective service laws, but by officials charged with duties thereunder (e.g., local selective service board or induction personnel), or by outsiders who volunteer or furnish information (e.g., family members and friends, medical practitioners, and the like).

It has been held under current law that the requirement that the false statement be one "regarding or bearing upon" a classification in effect mandates a showing of materiality of the statement, although it is not necessary to show that the statement proximately caused a particular classification to be awarded.[31] This requirement of materiality is carried forward through the reference in this subsection to conduct constituting a violation of section 1343, which requires that the false statement in fact be material.

B. Culpability

The conduct in paragraph (1) is failing, neglecting, or refusing to fulfill the various duties enumerated in subparagraphs (A) through (D). Since no culpability standard is specifically prescribed, the applicable state of mind is "knowing," i.e., the offender must be proved to have been aware that he was failing, neglecting, or refusing to perform one of the enumerated duties (e.g., to register for military service). This standard is consistent with that under present Federal law, which generally requires merely a deliberate refusal to obey the law, irrespective of the registrant's belief that the particular duty which he refuses to perform is invalid.[32] Thus, the Committee has rejected the suggestion of the National Commission, found also in S. 1, as originally introduced in the 93d Congress, that a specific intent to evade be an element of this offense.[30]

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[29] See Final Report, § 1108.

[30] Prosecutions for failing to report for or submit to examinations are typically brought only after a registrant has exhausted the patience of the authorities after a long history of attempting to avoid his responsibilities under the selective service laws. See, e.g., *United States* v. *Maybury*, 453 F.2d 1233 (9th Cir.), cert. denied, 406 U.S. 900 (1972). In such cases, prosecution for this offense has certain advantages, since many defenses involving claims of incorrect classification of the registrant are unavailable.

[31] See *United States* v. *Kember*, 458 F.2d 918, 923 (7th Cir. 1971), cert. denied, 407 U.S. 910 (1972); *United States* v. *Locke*, 431 F.2d 259 (5th Cir. 1970).

[32] See *United States* v. *Jacques*, supra note 28.

The fact that the person was under a duty to do one of the enumerated things is an existing circumstance. The culpability level is specifically set at "knowing," thus requiring proof that the offender was aware of the duty. The further element that the duty derived from the provisions of a Federal statute governing military service, or a presidential proclamation, regulations, or administrative order promulgated thereunder, is also an existing circumstance. However, by virtue of section 303(d)(1)(A), no mental state need be proved as to this element.[31]

The conduct in paragraph (2) is engaging in conduct constituting an offense under section 1343(a)(1). The applicable state of mind that must be proved is at least "knowing," i.e., that the offender was aware that he was engaging in the conduct described in section 1343.[32] However, by operation of section 303(d)(1)(A), it is not necessary to show that the offender was aware or had any mental state with regard to the fact that such conduct constituted a violation of section 1343. The specific intents set forth in subparagraphs (A) and (B) state the alternative purposes for which it must be proved that the offender engaged in the prohibited conduct.

Subsection (b) provides, in essence, that the proof and affirmative defense provisions of section 1345 which apply to section 1343(a)(1) apply also to this section. These provisions, which consist of a definition of materiality and an affirmative defense of retraction, are explained in connection with the discussion of subchapter E of chapter 13 herein.

3. Jurisdiction

No jurisdictional base is set forth with regard to this section. Accordingly, Federal jurisdiction is plenary as described in section 201(b)(2).

4. Grading

In contrast to the uniform, five-year maximum penalty prescribed in current law, the Committee has decided to create grading differentials for this offense, depending upon whether it is committed in time of war or in other less exigent circumstances. Thus, an offense under this section is graded as a Class D felony (up to five years in prison) if it is committed in time of war[33] and a Class E felony (up to two years in prison) in any other case, except one. The exception is if the offense consists of a failure to register, under subsection (a)(1)(A), that occurs solely during periods where the authority to induct is suspended. In this situation, the offense is graded as a Class A misdemeanor (up to one year in prison).

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[30] See Final Report, § 1106; section 2-3B5 of S. 1, as originally introduced in the 93d Congress.

[31] See sections 302(b)(2) and 302(c)(1).

[32] See sections 303(b)(1) and 302(b)(1).

[33] The term "war" is discussed in relation to section 1101 (Treason).

8.

SECTION 1314, FROM H.R. 6915, 96TH CONG., 2D SESS., AS REPORTED BY THE HOUSE COMMITTEE ON THE JUDICIARY (H.REP.NO. 96-1396)

§ 1314. Avoiding military or alternative service

(a) Whoever, being under a duty imposed by Federal law governing military service to—

(1) register for military service;

(2) report for, and submit to, an examination to determine fitness for military or alternative service;

(3) report for and submit to induction into military service;

(4) report for and perform alternative service;

knowingly fails or refuses to perform such duty with intent to avoid military or alternative service shall be punished as set forth in subsection (b) of this section.

(b) An offense under this section is—

(1) a class D felony if the offense is committed during a time of war or national defense emergency;

(2) a class E felony if the offense—

(A) is under paragraph (2), (3), or (4) of subsection (a) of this section, at any other time; and

(B) is under paragraph (1) of subsection (a) of this section at any other time, if during that time persons are being inducted into military service; and

(3) a class C misdemeanor in any other case.

(c) It is a defense to a prosecution for an offense under subsection (a)(4) of this section that the actor registered for military or alternative service and that the actor failed to report for and perform alternative service solely because of a bona fide religious belief.

(d) There is extraterritorial Federal jurisdiction over on offense under this subsection if the conduct constituting the offense was committed by a national of the United States.

§ 1314—Avoiding military or alternative service

This section carries forward part of 50 U.S.C. App. 462, which proscribes certain conduct that violates the selective service laws, including failure to register, report for, and submit to, induction; failure to report for a physical examination; and failure to report a change of address or to carry one's selective service card. Current law, however, is awkwardly drafted and fails to distinguish between conduct violating less significant regulations and conduct that seriously jeopardizes the integrity of the selective service system.

Subsection (a) makes it an offense for someone who has a duty to register or report for military service, be inducted into military service, or perform alternative service, to fail to perform such duty with the intent to avoid military or alternative service. The requirement that the actor engage in conduct with a specific intent carries forward current law. *United States* v. *Jacques*, 463 F.2d 653 (1st Cir. 1972); *United States* v. *Boardman*, 419 F.2d 110 (1st Cir. 1969), *cert. denied*, 397 U.S. 991 (1970); *Silverman* v. *United States*, 220 F.2d 36 (8th Cir. 1955).

Subsection (b) makes the offense a class D felony during war or a national defense emergency (a term defined in section 1320 (relating to definitions for subchapter) of the proposed code) and a class E felony if the offense is under paragraph (2), (3) or (4) of subsection (a) at any other time. Subsection (b)(2) also provides that an offense under paragraph (a)(1) is a class E felony if the conduct constituting the offense occurs during a time when persons are being inducted into the military. Subsection (b)(3) provides that an offense which occurs under circumstances other than those listed in subsection (b)(1) or (2) is a class C misdemeanor. Thus, the effect of subsection (b)(3) is to grade as a class C misdemeanor the failure to register for military service when there is no lawful authority to induct persons into the military service. This grading reflects the view that non-registration, when induction is not authorized, is of a less serious nature than the other offenses defined by this section. The present law penalty is the equivalent of a class D felony.

The Committee decided to classify the offense on the basis of whether or not the United States was at war, viewing a wartime violation of this section as presenting a greater risk to national security. The use of the terms "war" and "national defense emergency" means that the section will reach Congressionally declared wars and situations involving substantial armed conflict prior to a Congressional declaration of war (but in combination with the provisions of the National Emergencies Act, such coverage would last no more than six months).

Subsection (c) provides a defense for persons who have registered for miltary service and who have been found qualified for alternative service, but who refuse to perform such service because of bona fide religious belief. This defense is applicable only where the prosecution is for a failure or refusal to report for or perform alternative service. By specifically setting forth this defense, the Committee does not mean to affect any judicially created defenses to prosecutions for failing or refusing to register for military service, to report for or submit to an examination to determine fitness for military or alternative service, or to report for and submit to induction. *See* section 721 (relating to nature and effect of defense) of the proposed code. The Supreme Court has held that first amendment guarantees provide a defense if the requisite circumstances exist. *Gillette* v. *United States*, 401 U.S. 437 (1971); *Welsh* v. *United States*, 398 U.S. 333 (1970); *United States* v. *Seeger*, 380 U.S. 163 (1965).

Subsection (d) provides for extraterritorial jurisdiction where the actor is a United States national (as that term is defined in 8 U.S.C. 1101). This provision is based upon the nationality principle of international law. There is also Federal jurisdiction over the offense if it is committed within the general or special jurisdiction of the United States. *See* section 111(b) (relating to Federal jurisdiction) of the proposed code.